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Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER SLATER,

Petitioner,

v.

THE STATE OF NEW JERSEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is an individual's Fourth Amendment right to be free from involuntary searches and seizures violated where the only evidence supporting such search and seizure is an allegation that the vehicle occupied by that individual was poorly parked in the vicinity of a "known prostitute?"

LIST OF PARTIES

Petitioner:

CHRISTOPHER SLATER

Respondent:

STATE OF NEW JERSEY

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Petitioner respectfully petitions this Honorable Court for a Writ of Certiorari to the Supreme Court of New Jersey in State v. Slater and Lane, N.J. Supreme Court M-37 September Term 2010 066305 (September 23, 2010).

OPINIONS BELOW

The Opinion and Order of the New Jersey Appellate Division reversing the order of the trial court were unpublished[1], as was the order New Jersey Supreme Court denying Petitioner's Motion for leave to appeal. The operative documents are appended hereto as Appendix "F" (124a) and Appendix "G" (139a), respectively.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

The New Jersey Supreme Court's September 23, 2010 Order denying review in this matter is final as to the New Jersey Appellate Division's

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[1] See http://lawlibrary.rutgers.edu/courts/appellate/a5857-08.opn.html (consulted 12/19/10).

reversal of the trial court's order and opinion suppressing evidence in this case as the fruits of an illegal search and seizure under the Fourth Amendment to the United States Constitution.

The said orders and decision of the said New Jersey appellate courts are repugnant to the Fourth Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment, because said orders and decision purport to grant to the state unprecedented police powers to stop and search citizens without reasonable suspicion, all in violation of this Court's mandate in Terry v. Ohio, 392 U.S. 1 (1968), and its progeny.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution states as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,

> shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S.C.A. Const. Amend. IV-Search and Seizure

The Fourth Amendment is made applicable to states by the Fourteenth Amendment. E.g. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

STATEMENT OF THE CASE

1. Procedural History

On April 30, 2008, Robert Lane and Christopher Slater were arrested and charged by way of complaint with possession of controlled, dangerous substances (hereinafter "CDS"), with intent to distribute same, following an investigatory stop in the Maurice View Plaza parking lot, Millville, New

Jersey. In a three-count indictment dated November 19, 2008, Defendant-Petitioner Slater was charged with Third-Degree Possession of CDS, N.J.S.A. 2C:35-10(a), Second-Degree Possession of CDS with Intent to Distribute, N.J.S.A. 2C:35-5(b), and Second Degree Conspiracy, N.J.S.A. 2C:35-5(b)(2).

A suppression hearing was held on April 8, May 27, and May 28, 2009 before the Honorable Robert P. Becker, Jr., J.S.C. On May 28, 2009, Judge Becker entered an oral opinion granting the Motion to Suppress Evidence, and entered, on June 17, 2009, an Order suppressing all of the contraband and statements taken from Defendant-Petitioners and their vehicle.

The State moved for leave to appeal the suppression order on July 7, 2009, which motion was granted by the New Jersey Superior Court, Appellate Division on July 30, 2009. On or about August 20, 2009, Petitioner Christopher Slater filed a Motion for Reconsideration of the Order granting leave to appeal. Reconsideration was granted but the Order granting leave to appeal was affirmed.

On May 10, 2010, the Honorable Judges Reisner, Yannotti, and

Chambers of the New Jersey Superior Court, Appellate Division, heard oral argument in the matter.

On May 27, 2010, the said Judges of the Appellate Division issued an order and opinion reversing the suppression order of the trial court, stating that the police officers who stopped Defendants Slater and Lane were justified in doing so based upon their observations that:

> [Defendants] slowed down as they passed [a "known" prostitute] and blinked the brake lights; they circled the block twice, passing [the alleged prostitute] both times; they then pulled into a parking lot...and drove across the lot so that their car was facing the corner of Columbia where [the alleged prostitute] was standing. Instead of parking in a stall, [Defendants] parked sloppily at an angle across a stall. The [alleged prostitute] then left her corner and headed across the street toward defendants' car.

State v. Slater and Lane, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11-12).

On or about June 11, 2010, Defendant-Petitioner Slater, through his counsel, filed a Notice of Motion for Leave to Appeal the May 27, 2010 Decision and Order of the Appellate Division. On September 23, 2010, the New Jersey Supreme Court entered an order denying Petitioner's motion for leave to appeal, leaving the Appellate Division's opinion and order intact and rendering it "final" for purposes of the herein Petition.

2. Statement of Facts and of the New Jersey Courts' Determination

On Wednesday, April 30, 2008, at approximately 11:34 p.m., Defendant-Petitioner Christopher Slater and Defendant Robert Lane were arrested for possession of alleged controlled, dangerous substances (hereinafter "CDS") by the members of the Millville, New Jersey, Police Department. Detective Harold Duffield testified at the suppression hearing that he, Detective-Sergeant Jodi Farabella, and Detective Joseph Hoydis, were parked in their police vehicle near the intersection of Columbia and Vine Streets, Millville,

New Jersey. (1T10-18 to 19).[2] They were watching an African-American female named Mary Bowen, believed by the officers to have engaged in past acts of prostitution. (1T11-19 to 12-5).

Duffield testified that the driver of a black sedan, (ultimately identified as Robert Lane), decelerated the vehicle, applied the brakes, circled the block, and pulled into a parking lot near the officers' location. (1T14-7 to 15). Although Duffield stated that he could see the black sedan clearly, he claimed he could not make out the race or gender of the driver or passenger (ultimately identified as Defendant-Petitioner Christopher Slater). (1T32-16 to 33-7). Duffield stated that he observed Mary Bowen begin to walk toward the subject vehicle.

At that point, without further evidence of suspicious activity, the officers pulled their police cruiser directly behind the subject vehicle, boxing it in, and then approached the vehicle on foot, with their service weapons and badges clearly visible. (1T84-11 to 85-1) (3T17-8 to 9). Upon cross-examination by undersigned

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[2] "1T" refers to the transcript dated April 8, 2007 (Appendix "C", at 4a-50a); "2T" refers to the transcript dated May 27, 2009 (Appendix "D", at 51a-88a); "3T" refers to the transcript dated May 28, 2009 (Appendix "E", at 89a-123a).

counsel, Detective Duffield summarized the evidence that he considered in choosing to stop Defendants Slater and Lane:

> Q: Is it fair to say, the only indication that you had that there was some sort of prostitution transaction going on [was] that some brake lights would flash and the subject vehicle pulled into a parking spot?
>
> A: That would be fair to say.

(1T34-18 to 23)

Detective Farabella gave similar testimony when the undersigned cross-examined him on the issue of reasonable suspicion:

> Q: You testified earlier that you circled around Mary Bowen. You also testified earlier that one of the facts that you consider in identifying potential johns, the Defendants, was that they circled Mary Bowen ... [m]y suggestion is and my question is, the only

> thing that indicated to you that these guys were looking for a prostitute was the fact that they tapped their brake light? Is that correct?
>
> A: And circling twice.
>
> Q: Okay. So they circled one more time than you did and tapped their brake?
>
> A: Correct.
>
> Q: And that's it; right?
>
> A: That's all I needed to see or observe.

(3T19-23 to 20-11).

Duffield admitted that when he and his team stopped Defendant-Petitioners' vehicle, he parked his police car in such a way as to prevent the subject vehicle from leaving the scene. (2T47-13 to 48-1).

Also, the following exchange occurred between undersigned counsel and Officer Farabella on cross-examination:

> Q: Okay. And it [the police vehicle] was close enough where Mr. Lane was not going

to be able to back out
or – and leave.
Is that right?

A: That's correct.

(3T23-23 to 26).

Shortly after pulling behind the subject vehicle, Duffield approached the front driver's side and began to question Robert Lane. (1T15-4 to 12). Duffield testified that he was unsure if he would have let Slater and Lane leave if they had refused to answer his initial questions. (2T28-23 to 29-2). Lane was asked if he was attempting to "pick up" Mary Bowen, to which he replied, no, that he had dropped his cell phone, and had pulled over to retrieve it. (1T15-15 to 24). At this point, Mary Bowen was, according to Duffield, approximately fifteen feet away from the subject vehicle. (1T30-5 to 8).

Duffield testified that after speaking to Robert Lane for three to five minutes, he detected a "strong odor of raw marijuana coming from inside the vehicle" (3T54-5 to 13). In the meantime, another police unit arrived on the scene, Officer Jason Vinzinski. (1T38-2 to 11). Vinzinski ordered passenger Christopher Slater out of the vehicle, while Duffield extracted Lane. (1T18-23 to 25).

At the time Duffield initiated the conversation with Robert Lane there were two armed officers on the passenger side of the subject vehicle, and a fourth had stopped Mary Bowen (2T24-2 to 25-16). Duffield was the only officer to smell the raw marijuana during the interrogation, and he could not recall whether he requested Robert Lane to exit the subject vehicle before or after telling the other officers about the smell (2T26-6 to 27-8).

It was only after removing both occupants from the vehicle that the arresting officers saw suspected cocaine inside the vehicle (1T19-1 to 6). The marijuana allegedly "detected" by Duffield was recovered inside a plastic bag from the pocket of a jacket worn by Christopher Slater, but later attributed to Robert Lane in statements provided by each while in custody at police headquarters.

On January 6, 2009, Investigator Del Cassidy of the New Jersey Office of the Public Defender, at the undersigned's request, conducted a surveillance of the parking lot where defendants had been seized. Investigator Cassidy determined that the "Maurice View" parking lot was used by residents of the surrounding neighborhood for overnight parking. Investigator Cassidy's report was

admitted into the record by stipulation of the parties.

Duffield admitted that he was aware that nearby residents regularly utilized the "Maurice View" lot for overnight parking, in accord with Investigator Cassidy's findings (1T76-18 to 23). Interestingly, Robert Lane in fact lived in a house nearby.

Testimony in the suppression hearing concluded on May 28, 2009, and Judge Becker granted Defendant-Petitioners' Motion to Suppress that same day by way of an oral decision. He found that a reasonable actor in the Defendant-Petitioners' situation—inside a vehicle, boxed-in by a second (police) vehicle, and surrounded by three armed police officers, would not have felt free to leave. Thus, he found that Slater and Lane were subjected to an investigatory stop. Significantly, Judge Becker made this ruling after having found that each of the State's witnesses, Officers Duffield and Farabella, had offered fully credible testimony.

Although the State in its trial brief opposing suppression, abandoned any argument that the encounter was a mere "field inquiry," Judge Becker specifically ruled that the encounter was indeed not a properly initiated field inquiry (3T60-1).

Furthermore, Judge Becker concluded that the officers did not have "reasonable suspicion" under Terry v. Ohio, 392 U.S. 1, (hereinafter "Terry") and its progeny, to justify an investigatory stop, and ordered the evidence obtained thereby, most notably the alleged CDS, suppressed (3T64-11 to 17).

Judge Becker also found that since the investigatory stop was illegal, the plain view exception did not apply, as the officers were not lawfully in area from which they perceived CDS (3T65-15 to 20).

Judge Becker noted, parenthetically, that he was puzzled as to why the officers, who testified that they were investigating a suspected sex transaction, did not wait until Mary Bowen approached the car before moving in (3T64-2 to 6), and also found it significant that there was never any evidence of Bowen communicating to Slater and Lane (3T64-4 to 6 and 1T72-1 to 16).

REASONS FOR GRANTING THE PETITION

I. REVIEW IS WARRANTED TO CORRECT THE MISAPPLICATION OF THE FOURTH AMENDMENT (AS APPLIED TO THE STATES THROUGH THE FOURTEENTH AMENDMENT) BY THE NEW JERSEY APPELLATE

DIVISION IN ITS REVERSAL OF THE OPINION AND ORDER OF THE TRIAL COURT SUPPRESSING EVIDENCE, WHICH COURT FOUND THAT PETITIONER WAS ILLEGALLY DETAINED AND SEARCHED BY NEW JERSEY POLICE OFFICERS WITHOUT THE "REASONABLE SUSPICION" REQUIRED UNDER THIS COURT'S DECISION IN TERRY V. OHIO, 392 U.S. 1 (1968).

This Honorable Court has determined that when the police restrain a person's freedom to walk away, they have seized that person under our state and federal constitutions. Terry v. Ohio, 392 U.S. 1 (1968) (hereinafter "Terry"); accord State v. Davis, 104 N.J. 490, 498 (1986).

Whether a seizure has occurred is determined from the defendant's perspective, State v. Tucker, 136 N.J. 158, 165-166 (1994), and the key is whether a reasonable person in the defendant's position would have believed that he was free to walk away from the officer without answering any questions. State in the Interest of J.G., 320 N.J. Super. 21, 31 (App. Div. 1999); State v. Davis, supra, 104 N.J. 490 at 498 (quoting INS v. Delgado, 466 U.S. 210, 215, 104 S.Ct. 1758, 1762, 80 L.Ed.2d 247, 255 (1984); United States v. Mendenhall, 466 U.S. 544, 554, 100

S.Ct. 1870, 1877, 64 L.Ed.2d 497, 509 (1980) ("[A]n initially consensual encounter between a police officer and a citizen can be transformed into a seizure . . . if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.")).

The police may not constitutionally seize a person without a "particularized and objective basis for suspecting the particular person stopped of criminal activity" derived from the "totality of the circumstances" of the encounter. United States v. Mendenhall, supra, at 501 (quoting United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 694-95, 66 L.Ed.2d 621, 628-29 (1981)).

In Terry, supra, and its progeny, this Court narrowly defined the prerequisite for police invasion of citizens' Fourth Amendment rights in the absence of probable cause. In State v. Thomas, 110 N.J. 673 (1988) (hereinafter "Thomas"), the New Jersey Supreme Court reiterated the narrow constraints of Terry.

Terry, as construed by Thomas, demands that the State prove that the officer, in the totality of the circumstances, had "a particularized

and objective basis" for believing that the suspect was involved in criminal activity, in order to justify a stop. State v. Thomas, supra, 110 N.J. at 678. The officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." Id. at 678 (quoting Terry v. Ohio, supra, 392 U.S. at 21, 88 S.Ct. at 1879). The New Jersey court later stated that an officer's reasonable suspicion "involves something less than the probable cause standard needed to support an arrest." Id. at 678.

The Honorable Judges of the New Jersey Appellate Division have made a mockery of Terry, supra, and its progeny, finding, in a decision which it prefers not to publish, that citizens may be seized merely for parking, albeit badly, in an area frequented by alleged prostitutes:

> [Defendants] slowed down as they passed [a "known" prostitute] and blinked the brake lights; they circled the block twice, passing [the alleged prostitute] both times; they then pulled into a parking lot...and drove across the lot so that their car

> was facing the corner of Columbia where [the alleged prostitute] was standing. Instead of parking in a stall, [Defendants] parked sloppily at an angle across a stall. The [alleged prostitute] then left her corner and headed across the street toward defendants' car.

State v. Slater and Lane, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11-12).

By the Appellate Division's account of the facts, Defendant-Petitioners deserved to be stopped by police because they badly parked their vehicle in an area frequented by a known prostitute. There is no federal or New Jersey case which provides such broad powers to police.

Astoundingly, the Appellate Division supported its conclusion that officers had reasonable suspicion in this case with the following patently ridiculous statement: "There was no objectively observable legitimate reason for [Defendant Lane] to tap [his] brake lights just as the car passed the prostitute, or for [Defendants'] car to circle the block

twice in the middle of the night." Ibid. The Honorable Judges of the Appellate Division failed to explain how these allegedly suspicious acts differ from the behavior of an innocent driver seeking and finding a parking spot, or how "tapping" one's brakes differs, or is more suspicious, than applying one's brakes in the normal course of driving.

Moreover, the cases cited by the Appellate Division in its opinion simply do not support that court's conclusion that the police had reasonable suspicion to stop Defendant-Petitioners. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11-12).

In Adams v. Williams, 407 U.S. 143, 145-46, 92 S. Ct. 1921, 1923, 32 L. Ed. 2d 612, 616-17 (1972), see State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 12), a police officer acting on a tip supplied moments earlier *by an informant known to him*, asked the defendant to open his car door. Adams v. Williams, supra, 407 U.S. at 145-146, 92 S. Ct. at 1923, 32 L. Ed. 2d at 616-617 (1972). The defendant lowered the window, and the officer reached into the car and found a loaded handgun (which had not been visible from the outside), in the

defendant's waistband, precisely where the informant said it would be. Ibid. Petitioner was then arrested for unlawful possession of the handgun. Ibid.

The Appellate Division also relied heavily upon State v. Davis, 104 N.J. 490 (1986) (hereinafter "Davis"), to support its conclusion that the police had reasonable suspicion to stop Defendants. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 13). In Davis, supra, the police were responding "to a radio dispatch from a credible informer." Davis, supra, 104 N.J. at 506 (1986). The New Jersey Supreme Court, in accord with this Court's decision in Terry, supra, found that reasonable suspicion existed in Davis because:

> the informer [was] more than the ordinary citizen—he [was] a member of the Springfield First Aid Squad, an individual who, while not part of the government, [was] more involved and presumably more public spirited than the average citizen. The police could therefore rely on him as a

> credible source of information.

State v. Davis, 104 N.J. 490, 506, 517 A.2d 859, 868 (1986).

Similarly, in State v. Stovall, 170 N.J. 346, 370, 788 A.2d 746, 760 (2002), see State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 13), the lynchpin of the New Jersey court's finding of reasonable suspicion is the fact that a *credible informant* has fingered the defendant—but there are numerous additional facts justifying the stop:

> Detective Benoit had reasonable suspicion to stop defendant based on the following circumstances: the information relayed from the ticket agent and Agent Cahill to Detective Benoit; Benoit's confirmation of that information; Agent Cahill's description of defendant's identification as "fraudulent"; Benoit's independent determination that the identification was questionable because

defendant's only form of identification was an expired identification card listing an address on Main Street in Los Angeles; defendant's flight originating in Los Angeles and arriving in Newark-a known drug trafficking route; defendant's ticket being purchased at the same time and from the same agency as the other suspect's ticket, but the two women traveling separately and appearing not to know one another; the "bulk" ticket; defendant's ticket being purchased from a travel agency frequently used by narcotics traffickers; defendant's small, carry-on "crew-type" bag; defendant's visible nervousness; and Detective Benoit's extensive experience and expertise in the narcotics interdiction field.

State v. Stovall, supra, 170 N.J. 346, 370, 788 A.2d 746, 760 (2002).

Here, there was no informant's tip, credible or not, that Defendants would be soliciting prostitution on the corner occupied by Mary Bowen, an alleged prostitute.

Finally, the Appellate Division's references to the New Jersey Supreme Court's decision in State v. Pineiro, 181 N.J. 13, 25, 853 A.2d 887, 894 (2004)(hereinafter "Pineiro") are similarly misplaced.

In Pineiro, the court found that the police had reasonable suspicion to conduct an investigatory stop in a high drug, high crime area because (1) the officer observed the defendant give the codefendant a pack of cigarettes while they were standing on street corner; (2) the officer was aware that drugs sometimes were transported in cigarette packs; (3) the officer was familiar with the defendant from having "cleared him off the corners" in the same area; (4) the officer had received intelligence reports that identified defendant as a suspected drug dealer; (5) the officer was aware that the codefendant had been involved with illicit drugs and that the officer previously had arrested him, and (6) both defendant and codefendant immediately departed

area upon seeing officer. State v. Pineiro, supra, 181 N.J. 13, 25, 853 A.2d 887, 894 (2004).

Here, the police did not know the Defendants from Adam, they observed no transfer of money or drugs, they had no informant's tip, and Defendants made no attempt to flee.

Thus, the Appellate Division approaches absurdity in citing Pineiro to support its conclusion that "as a matter of law, what Duffield and Farabella observed gave rise to a reasonable and articulable suspicion that a crime was about to occur, and hence justified an investigatory stop." State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 13).

A. THE TRIAL COURT PROPERLY CONSIDERED THE OFFICERS' TRAINING AND EXPERIENCE IN CONDUCTING ITS "TOTALITY OF THE CIRCUMSTANCES ANALYSIS" WHILE DETERMINING WHETHER OR NOT THE POLICE OFFICERS HAD REASONABLE SUSPICION TO CONDUCT AN INVESTIGATORY STOP.

On appeal, the State relied upon the case of State v. Arthur, 149 N.J. 1 (1997)(hereinafter "Arthur"), to support its allegation that the trial

court failed to take into account the officers' training, experience, and knowledge, in seizing Christopher Slater and Robert Lane, and the Appellate Division apparently agreed. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11) (citing Arthur, supra, 149 N.J. at 8 (1997).

The record supports neither the State's argument nor the opinion of the Appellate Division. Judge Becker heard extensive testimony regarding the experience, knowledge, and training of Detectives Duffield and Farabella in the detection of prostitution-related crimes. The Judge found this testimony "extremely credible" (3T51-20 to 25). After judging the officers to be honest and credible witnesses, Judge Becker found that "[the] facts are not sufficiently specific and articulable to support a finding that the officers believed that criminal activity was afoot and [acted] reasonabl[y] under the totality of the circumstances" (3T63-25 to 64-1).

The State also relied upon Arthur to support the proposition that Judge Becker did not give proper "weight" to the experience of the officers in the instant case. Upon even a cursory reading of Arthur, however, it should be readily

apparent that the officer's training and experience in the instant case received all the weight that it deserved, and perhaps more.

The officer that called for the investigatory stop in Arthur had witnessed over "1,000 narcotics transactions." Id. at 4-5. In the present case, Duffield had participated in "five to eight" prostitution investigations (1T7-24 to 8-2), and Farabella had participated in "over ten" prostitution investigations at the time of the incident (3T9-16 to 21). The disparity in experience of the arresting officers in Arthur and the arresting officers in the instant case is incredible. Expressed as a percentage, Officers Duffield and Farabella had only 1% of the experience attributed to the arresting officer in Arthur.

The relative lack of experience in detecting prostitution-related crimes admitted to by the officers in the instant case, supports Judge Becker's finding that the State failed to provide an adequate explanation as to why the detectives did not wait until Ms. Bowen approached the subject vehicle (3T64-2 to 6). This is because more experienced officers would have waited until Mary Bowen, a suspected prostitute, approached the vehicle occupied by suspected "Johns",

thereby allowing money to change hands or sexual contact to actually occur.

It is almost self-evident that the "police do not have to wait for a crime to occur before making an investigatory stop." State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11) (citing Arthur, supra, 149 N.J. at 8 (1997). If consummation of the criminal act were required in all seizures, there would be point to having any evidentiary standard less than probable cause. In the Appellate Division's view, however, there is no standard—the State is permitted to stop and interrogate its citizens based on purely subjective speculation—as is the case here.

In summation, Judge Becker properly considered and weighed the arresting officers' prior experience and knowledge in prostitution stings, which was miniscule, and correctly found that the investigatory stop was improper.[3] The Appellate Division's overruling of Judge Becker's findings

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[3] It is believed by undersigned counsel that Judge Becker, before becoming a Superior Court Judge in the Law Division, was a long-time New Jersey State Police Officer, making him particularly suited to deal the fact-intensive legal question of whether or not police had reasonable suspicion to stop Defendants.

thus constituted clear error, and its Order must be reversed.

B. THE TRIAL COURT CORRECTLY FOUND THAT THE POLICE OFFICERS, IN LIGHT OF THEIR TRAINING AND EXPERIENCE, AND IN THE TOTALITY OF THE CIRCUMSTANCES, DID NOT HAVE REASONABLE SUSPICION TO CONDUCT AN INVESTIGATORY STOP OF DEFENDANT-PETITIONERS.

On appeal, the State relied primarily on State v. Arthur, supra, to support its proposition that the officers in this case had reasonable suspicion to stop Christopher Slater and Robert Lane. However, the evidence known to the officers in Arthur was significantly more particularized, more suspicious, and of greater magnitude and quantity than what the officers had here.

According to the Court, the officer in Arthur:

> "perceived that (1) defendant drove his automobile into and parked on the street in an area known for high levels of narcotics activity; (2) [the suspected buyer] entered defendant's

> car, remained there for a short period of time engaged in conversation with defendant, and exited the vehicle carrying a paper bag she had not possessed when she entered the car; (3) defendant immediately drove off after [the suspected buyer] exited the vehicle; (4) paper bags are often used to transport drugs...and (5) Walls engaged in furtive movements upon exiting the vehicle and tried to conceal the bag that she had obtained from defendant.

State v. Arthur, supra, 149 N.J. at 10.

There having existed no non-speculative, non-criminal explanation for the observed behavior, the officers were justified in stopping the defendant. Id. at 11-12.

In this case, the only evidence known to the officers that an illegal sex transaction was about to occur was that (1) a vehicle circled the block, (2) the driver of that vehicle apparently applied his or her brakes

(as the brake lights were said to have illuminated) and (3) the driver pulled into a parking lot.[4] Although a "known prostitute" was moving towards the vehicle, she never got within fifteen feet of that vehicle, and there's no indication that the occupants in the vehicle were even aware of her presence (1T13-22 to 14-6).

Consequently, Judge Becker correctly reasoned that these three facts did not provide the arresting officers with a "specific and particularized basis for an objectively reasonable suspicion," State v. Thomas, supra, 110 N.J. at 683, that a crime was underway.

The allegedly "suspicious" activities cited by the State are easily attributed to the acts of an innocent person parking his car. It is self-evident that very act of navigating into a parking space, or simply making a turn, requires application of one's brakes. There being no specific, particular, or articulable evidence that Slater and Lane were about to engage in any criminal act, especially as distinguished from Mary Bowen, the Order of the Appellate Division must be reversed. See United States v. Mendenhall, supra, at 501 (quoting

[4] The Appellate Division was also impressed by the fact that Defendant Lane is, apparently, a sloppy parker. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 12).

United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 694-95, 66 L.Ed.2d 621, 628-29 (1981)(police may not constitutionally seize a person without a "particularized and objective basis for suspecting the particular person stopped of criminal activity," derived from the "totality of the circumstances" of the encounter)(emphasis added)).

Thus, while there may have been reasonable suspicion to stop *Mary Bowen*, there is no evidence tying this "known prostitute" to Defendant-Petitioners, and there was no legal basis for their seizure.

On appeal, the State cited the New Jersey Supreme Court's decision in State v. Citarella, 154 N.J. 272, 279 (1998) (hereinafter "Citarella") in an attempt to bolster its argument that Judge Becker did not give sufficient weight to the arresting officers' training and experience in addressing the reasonable suspicion issue, and the Appellate Division references Citarella in its opinion. See State v. Slater and Lane, supra, No. A-5857-08T4 (App. Div. May 27, 2010) (slip op. at 11). However, Citarella actually highlights the illegality of the seizure at issue here. In Citarella the facts warranting reasonable suspicion included:

[defendant] riding over the George Washington Bridge by bicycle; riding in a hurried fashion; putting his bicycle into the back of a pickup truck not owned by Citarella or a member of his family; acting as if he wanted to leave the area quickly in that truck; and acting nervously. Based on his experience as a police officer, Ross also knew the following information: bicycles were often used for the transport of drugs from New York City into Fort Lee; there had been a rash of burglaries in the area; Citarella had been arrested many times before for drug crimes; Citarella had never been seen riding a bicycle previously; Citarella lived two miles from the area in the opposite direction than that in which he was riding; and Citarella's driving privileges had been suspended.

State v. Citarella, 154 N.J. 272, 280 (1998).

In the case at bar, Duffield testified that the only indication of a possible sex-for-money transaction was the flashing of brake lights and the vehicle having pulled around the block into a parking lot (1T34-18 to 23). Furthermore, Duffield was aware that the parking lot used by Defendant-Petitioners that night was typically used by neighborhood residents for overnight parking (1T41-1 to 5).

Perhaps more significantly, Robert Lane gave a perfectly innocent explanation for braking and pulling into the parking lot, having stated to Duffield, before any contraband was detected, that he had dropped his cellular phone, and sought to safely retrieve it. Moreover, Duffield admitted that prostitutes will often approach parked vehicles to solicit sex even if no "signals" are given, and thereby nullified the approach of Mary Bowen as a fact supporting reasonable suspicion (2T55-22 to 56-7).

Clearly, the officers in Citarella had much more evidence of criminality than those who seized Slater and Lane, and Citarella is therefore not controlling.

A New Jersey case more factually analogous to the case at bar is State v. Kuhn, 213 N.J.Super. 275 (App. Div. 1986) (hereinafter "Kuhn"). In Kuhn, a police officer experienced in detecting narcotics transactions observed a car parked in a high-crime area (as here within a parking lot), while two individuals were standing outside the vehicle on each side of the car, and a third was seated in the passenger seat. The officer, believing he was viewing a narcotics transaction, conducted a Terry-Thomas level seizure of the defendant. Although the officer testified that narcotics transactions are usually arranged in this set up (i.e., a man in the passenger seat with two others on each side of the vehicle), the court found that the seizure was illegal, stating:

> It may be that in an area such as the one described by the officer, in some percentage of cases when any group of three is seen, narcotics will be found if the three are searched; but the law does not permit a search of all such individuals merely because there will be a

> high incidence of contraband being found in their possession. There must be particularized suspicion.

Id. at 281-282 (emphasis added).

Thus, in Kuhn, despite the arresting officer's substantial experience in detecting narcotics crime, and the location of the stop having been a "high crime" area, the court found the facts did not rise to the level necessary to support reasonable suspicion. Id. at 282. This was because there was no traffic violation; the officer observed no narcotics and no money changing hands; there had been no report of recent crime nearby; the defendant and his companions fit no description of suspects in recent crime; there were no potential or likely victims of crimes observed nearby; there had been no informant's tip that crime or drug transaction was about to occur; and the defendant's vehicle matched no description of any vehicle reportedly involved in a crime. Id. at 280-283

Here, as in Kuhn, none of the typical indicators of illegal activity are present. Here as in Kuhn, the State relies primarily on the alleged

illegal transaction having occurred in a high-crime area, and to have been observed by a police officer allegedly trained and experienced in identifying such transactions. Here, as in Kuhn, these facts are not enough to justify a Terry-Thomas level seizure. Moreover, the officer's experience in Kuhn was given substantial weight, because the evidence revealed that the officer had conducted over fifty narcotics arrests. Id. at 163. Thus, the officer in Kuhn was *approximately ten times more experienced* than the officers in the case at bar, and this was *still* insufficient, in the court's view, to establish reasonable suspicion.

As did the court in Kuhn, Judge Becker properly weighed and considered the officers' experience and training before concluding that there was insufficient evidence to support an investigatory stop of Christopher Slater and Robert Lane. Because the State's arguments are not supported by the record, the Order of the Appellate Division reversing Judge Becker's suppression order must be reversed.

II. THIS PETITION SHOULD BE GRANTED BECAUSE THE DECISION OF THE NEW JERSEY APPELLATE DIVISION IS FINAL BY VIRTUE OF THE NEW JERSEY SUPREME COURT'S REFUSAL TO REVIEW SAME, AND PETITIONER'S LIBERTY HAS BEEN ILLEGALLY PLACED IN JEOPARDY THEREBY.

The New Jersey Supreme Court has declined to review the order and opinion of the New Jersey Appellate Division reversing the trial court's suppression order in this matter. The September 23, 2010 Order and Opinion of the New Jersey Supreme Court are therefore final for purposes of this Petition.

For all the reasons stated above, the Appellate Division's said Order and Opinion were entered in violation of Petitioner's right to be free of reasonable searches and seizures vested in him by virtue of the Fourth Amendment and this Honorable Court's opinion in Terry v. Ohio, supra, 392 U.S. 1 (1968) and its progeny.

Said Order and Opinion of the Appellate Division have wrongfully and illegally placed Petitioner's liberty in jeopardy, as his matter has now been remanded to the trial court for further prosecution.

No purpose can be served in subjecting Petitioner to trial, as the said Order and Opinion of the New Jersey Appellate Division are clearly in error, and shall be reversed on appeal if Petitioner is convicted.

III. CONCLUSION

The decision and order of the Appellate Division reversing Judge Becker's suppression order must therefore be reversed as clearly erroneous, and in violation of this Court's Fourth Amendment jurisprudence under Terry v. Ohio, supra, 392 U.S. 1 (1968).

The record admits of no legal basis for the Appellate Division's overturning the decision and order of the trial court suppressing physical and testimonial evidence due to the State's violation of Defendant-Petitioner's right to be secure in his person and possessions.

The record includes extensive testimony from the police officers involved in this case about their experience and knowledge in detecting prostitution-related crimes, and Judge Becker properly weighed that

experience and knowledge in light of the totality of the circumstances.

The record also clearly supports Judge Becker's conclusion that the officers did not have reasonable suspicion to stop Slater and Lane, and that their seizure was therefore illegal.

The decision and order of the Appellate Division reversing Judge Becker's suppression order must itself therefore be reversed as clearly erroneous, and in violation of this Court's Fourth Amendment jurisprudence under Terry v. Ohio, supra, 392 U.S. 1 (1968) and its progeny. Petitioner therefore requests that this Honorable Court grant his herein Petition.

Respectfully submitted,

THOMAS CONNELLY, ESQ.
2207 Chestnut Street
Philadelphia, PA 19103
Attorney for Petitioner

Dated: December 20, 2010

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER SLATER,
Petitioner,

v.

THE STATE OF NEW JERSEY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE
NEW JERSEY SUPREME COURT

APPENDIX TO PETITION

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(856) 453-1568

STATE OF NEW JERSEY,	: SUPERIOR COURT OF
	: NEW JERSEY
Plaintiff,	: LAW DIV. - CRIMINAL
	: CUMBERLAND COUNTY
v.	:
	: IND. NO. 08-11-01055-I/A
ROBERT LANE, and	: (Criminal Action)
CHRISTOPHER SLATER,	:
Defendants.	:

ORDER GRANTING DEFENDANT'S MOTION TO SUPRESS EVIDENCE

This matter having been opened to the court upon defendant's motion to suppress and the court having considered the papers submitted, testimony presented, arguments of counsel and for good cause shown:

IT IS ON THIS 17 DAY OF JUNE , 2009 ORDERED that defendants' motion to suppress all evidence seized in the above captioned matter is GRANTED.

/s/Robert P. Becker JR., J.S.C.

FILED JUNE 18, 2009
SUPERIOR COURT
OF CUMBERLAND
COUNTY

Supersede

SUPERIOR COURT OF NEW JERSEY
COUNTY OF CUMBERLAND
LAW DIVISION -CRIMINAL PART

State of New Jersey) Indictment No: 08-11-001055-I/A
)
v.) Term: July 2008
) Session: November 2008
Christopher D. Slater)
and Robert Lane)

INDICTMENT

THE GRAND JURORS of the State of New Jersey, for the County of Cumberland, upon their oaths, present that:

COUNT ONE

(Possession Of A Controlled Dangerous' Substance Third Degree)

CHRISTOPHER D. SLATER and ROBERT LANE

on or about the 30th day of April 2008, in the City of Millville in the County of Cumberland aforesaid, and within the jurisdiction of this Court, did knowingly or purposely possess a controlled dangerous substance, to wit: **Cocaine**, contrary to the provisions of N.J.S.A. 2C:35-10(a)(1), and against the peace of this State, the government and dignity of the same.

COUNT TWO

(Possession Of A Controlled Dangerous Substance With Intent To Distribute-Second Degree)

CHRISTOPHER D. SLATER and ROBERT LANE

on or about the 30th day of April 2008, in the City of Millville in the County of Cumberland aforesaid, and within the jurisdiction of this Court, did knowingly or purposely posses a controlled dangerous substance, to wit: **Cocaine**, in a quantity of one-half ounce or more, including any adulterants or dilutants, with intent to distribute same, contrary to the provisions of N.J.S.A. 2C:35-5(b)(2), and against the peace of this State, the government and dignity of the same.

COUNT THREE

(Conspiracy - Second Degree)

CRISTOPHER D. SLATER and ROBERT LANE on or about the 30th day of April 2008, in the City of Millville in the County of Cumberland aforesaid, and within the jurisdiction of this Court, did conspire with each other to commit the crime of Possession of a Controlled Dangerous Substance with Intent to Distribute, to wit: **Cocaine**, in a quantity of one-half ounce or more, a crime of the second degree, in violations of N.J.S.A. 2C:35-5(b)(2), contrary to the provisions of N.J.S.A. 2C:5-2(a)(1) and (2), and against the peace of this State, the government and dignity of the same.

Endorsed:

RONALD J. CASELLA
CUMBERLAND COUNTY
PROSECUTOR

/S/ Foreperson

By: /S/ Assistant Prosecutor
Assistant Prosecutor
Trial Team A

FILED NOVEMBER 19, 2008
SUPERIOR COURT
CUMBERLAND COUNTY

STATE OF NEW JERSEY
CRIMINAL DIVISION
CUMBERLAND COUNTY
IND NO. 08-11-1055-I/A
A.D. _____

State of New Jersey,)
Plaintiff(s),) TRANSCRIPT
vs.) OF
Christopher Slater) MOTION TO SEPARATE;
and Robert Lane,) MOTION TO SUPPRESS &
Defendant(s).) MOTION TO DISMISS

Place: Cumberland Co. Courthouse
Broad and Fayette Streets
Bridgeton, NJ 08302

Date: April 8, 2009

BEFORE:

The HONERABLE ROBERT P. BECKER, JR, J.S.C.

TRANSCRIPT ORDERED BY:

CATHRYN E. WILSON, Assistant Prosecutor

A P P E A R A N C E S:

CATHRYN E. WILSON, Assistant Prosecutor
Attorney on Behalf of the State of New Jersey

CHARLES SANDILOS, Assistant Deputy Public Defender
Attorney on Behalf of the Defendant Slater

THOMAS CONNELLY, ESQUIRE
Attorney on Behalf of the Defendant Lane

THE TYPE-RIGHT-ER
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Colloquy

THE COURT: All right. Let me call the matter then of State vs. Christopher Slater and, let me make sure I get this right, Robert J. Lane, both under Indictment 08-11-1055. Counsel, your appearances, please.

MS. WILSON: Good afternoon, Your Honor. Cathryn Wilson on behalf of the State.

MR. CONNELLY: Good afternoon, Your Honor. Thomas Connelly on behalf of Christopher Slater.

MR. SANDILOS: Charles Sandilos for Robert Lane.

THE COURT: Okay. I've been -- we're here today on this matter. There's three Motions that have been filed.

One; Motion to Conduct Separate Trials. The other, a Motion to Dismiss the Indictment and the other for a Motion to Suppress the evidence seized by law enforcement.

I would like to hear the Motion to Suppress first. That's the one that's testimonial. And we'll go from there if everybody agrees.

MS. WILSON: Fine, Judge.

MR. CONNELLY: Yes, Your Honor. That's fine. May I have a water at the counsel table, Judge?

THE COURT: Sure.

MR. CONNELLY: Thank you.
THE COURT: Okay. You are ready to proceed?
MS. WILSON: Yes, Judge, I am.
THE COURT: Sir, could you put your left hand on the Bible there and raise your right hand?
DET. HAROLD DUFFIELD, JR., STATE'S WITNESS, SWORN
THE COURT: Thank you, sir. Could I have your full name?
THE WITNESS: Harold Duffield, Jr.
THE COURT: Could you spell your last name for me?
THE WITNESS: Duffield, D-U-F-F-I-E-L-D.
THE COURT: Thank you, sir. Ms. Wilson?
MS. WILSON: Thank you.
DIRECT EXAMINATION BY MS. WILSON:
Q. Officer, where do you work?
A. I work for the City of Millville Police Department.
Q. And how long have you worked for Millville?
A. It'll be 12 years June 2.
Q. And what is your present assignment in Millville?
A. I'm assigned to the Narcotics Unit as a Detective.
Q. How long have you been in Narcotics?

A. It's six years and four months.
Q. And while you've been in Narcotics, have you received any special training in narcotics?
A. Yes, I have. Other than the police academy, yes, I have.
Q. And what did you learn in the police academy about narcotics specifically?
A. Basically, the identification. General things about the possession of drugs, possession with intent, the manufacturing and drug paraphernalia.
Q. And were there certain types of drugs that were shown to you?
A. Yes.
Q. And you were shown how -- were you shown how to identify --
MR. CONNELLY: Objection; leading.
THE COURT: I'm sorry?
MR. CONNELLY: Leading; objection.
THE COURT: You've got to stand up when you make an objection.
MR. CONNELLY: I'm sorry. I object to the form of the question as stated.
MS. WILSON: Judge, it's background but I'll rephrase.

MR. CONNELLY: Sorry.

DIRECT EXAMINATION BY MS. WILSON:

Q. At the police academy, were you shown different types of drugs?

A. Yes, I was.

Q. And at the police academy, were you shown how to identify certain types of drugs?

A. Yes, I was.

Q. And were you shown a certain type of drugs that may have smells?

A. Yes.

Q. And what kind of drugs would they be?

A. Marijuana.

Q. And how were you trained to identify marijuana?

A. Through the training, they actually had controlled burns, controlled smells and controlled views.

Q. At any time, did you observe raw marijuana?

A. Yes.

Q. And does raw marijuana, in your training, have a smell?

A. Yes, it does.

Q. And now, after the police academy, did you attend any other kind of narcotic schools?

A. Yes, I have.

Q. And do you recall what schools they were?

A. Yes. I have six other schooling in reference to drugs. Would you like me to --

Q. Yeah. You can just place the school names that you attended on the record.

A. Drugs for patrol officers, Top Gun, (inaudible) school, DEA drug school, marijuana eradication through the New Jersey State Police and cannabis indoor grow.

Q. And with specifically the marijuana schools, what did you learn at those schools?

A. Basically, identification. Once again, the smell, whether it be in raw form, burning form. How it's grown.

Q. Now, in your six years as a narcotics detective, how many times do you estimate you smelled either raw marijuana or burned marijuana?

A. Over 50 times.

Q. Now, have you received any special training in detective prostitution activity?

A. No advanced training but experience on the job. Yes, that's part of -- actually, we're the Narcotics. Unit however, we do a lot of the street level functions. Prostitution is included in that.

Q. And how many times as a narcotics detective

Do you -- can you estimate for us?
A. Between five and eight.
Q. And what types of things do you look for when you're doing a prostitution investigation?
A. It depends if you're looking for the johns or if you're actually trying to pick up the actual prostitutes themselves.
Q. Now, in your training has there been specific behaviors that you would observe when you were looking at different activity regarding prostitution?
A. Yes. As far as the johns attempting to pick up the prostitutes.
MR. CONNELLY: I'm going to object. He testified there was no formal training in prostitution detection.
MS. WILSON: He's talking about his experience, Judge. His training in the field.
MR. CONNELLY: You asked -- the question you asked was, in your training.
THE COURT: Excuse me. Excuse me, sir. We're going to do this in an order. Listen, you object. You state your comment. She makes her comment.
When she's done, if you want to go again but you don't interrupt her while she's talking. We want to make a clear record; okay? Just calm down we're

-- you're going to be able to talk.
MR. CONNELLY: Yes, sir.
MS. WILSON: Judge, for -- well, I'll just rephrase the question.
THE COURT: Does that satisfy or are you going to object to the rephrased question?
MR. CONNELLY: That's –
THE COURT: Okay. Go ahead.
DIRECT EXAMINATION BY MS. WILSON:
Q. In your experience conducting these five to eight prostitution investigations, is there certain behavior you have observed in the past regarding prostitutes and johns?
A. Yes.
Q. And what types of behaviors have you seen in these types of experiences?
A. Some of the behaviors, as in this case. The brake lights flashing as they drive by the prostitutes. The prostitutes waving.
The johns honking their horns as they drive by. Driving by and pulling over right away. Stopping, waiting.
Q. Okay. Now, I want to turn your attention to April 30 of 2008. Do you recall if you were working on

prostitutes that we've -- a female that we've arrested several times for prostitution.

Q. Have you or other officers you know arrested her in the past for prostitution?

A. Yes.

Q. Now, you saw Mary Bowen. Now, where was Mary Bowen when you first saw her?

A. On Vine Street.

Q. And what, if anything, was she doing at the time?

A. Just walking. Walking westbound on Vine.

Q. And at the time when you observed Mary Bowen, where were you?

A. I don't remember exactly where I was. I don't know if I was on Buck Street or Vine Street but I first saw her walking up Vine from High Street, between High and Buck.

But I don't remember if I was coming towards her I on Vine or going on Buck Street, going left on Buck Street.

Q. Now, upon observing Ms. Bowen, what did you do, if anything?

A. Well, we circled the block, I believe one time and I continued to watch her as she continued to walk west. As she crossed over Buck Street, we essentially tried

getting ahead of her.

And parked our car in Columbia Avenue, in the 500 block of Columbia Avenue, which Vine Street kind of T's into Columbia Avenue.

Q. And at the time, did you have a good view of Ms. Bowen so --

A. Yes. I mean, she went out of view for a little while but once we got parked, we observed her come to the corner, the corner of Columbia and Vine.

Q. How far away were you from Ms. Bowen, do you approximate?

A. Thirty yards, in an estimation.

Q. Did you have a good view of Ms. Bowen from where you were?

A. Yes, I did.

Q. And at that time when you were watching Ms. Bowen, what if anything else did you observe at that time?

A. Once she was at the corner, a black car went by south on Columbia Avenue and as he rode by, brake lights from the car go on.

Q. Now, at that time you saw -- you said that you saw brake lights?

A. Yes.

Q. And did that raise any kind of suspicion to

You?
A. Yes, it did.
Q. And why is that?
A. Going back to what we discussed earlier. I mean, it just raised some attention, you know, like is this guy trying to pick her up.
Q. Now, is that all the car did was tap its brake light?
A. Tap its brake lights, continued down Columbia and essentially went around the block. Which it's a parking lot there. It's called Maurice View Plaza. There's a parking lot. It's almost like a triangle. Went around, came back by the corner she was out and entered an entrance off of Vine Street into that parking lot and parked.
Q. And at that time what, if anything, did you observe?
A. Once the car pulled in and parked, Mary Bowen started walking across Vine Street towards where they were parked.
Q. And at that time, what did you do?
A. We waited a few minutes. Well, not a few minutes. We waited a short amount of time as she crossed over the road and reached the other corner.
We left our surveillance spot on Columbia and

essentially said hey, something's not right here. She's going to that car. Let's go investigate and see what's going on.
We left out spot and pulled in directly behind the Defendant's car.
Q. And at the time when you pulled behind him, the car was stopped; correct?
A. Yes.
Q. Okay. Now, once you pulled behind the car, what did you do?
A. I exited. I exited and approached the driver of the car.
Q. And were you able to speak with the driver?
A. Yes, I was.
Q. And what, if anything, occurred between you and the driver?
A. I asked him, you know, about the brake light. You know, what are you doing? You're flashing your brake lights. You trying to pick up the girl? Which she was there. I pointed at Mary Bowen.
And he denied anything -- denied any involvement with her. He basically told me that he pulled in there because he had dropped his cell phone. He pulled in there and parked to allow him to retrieve his phone.
Q. And do you -- did you find out who the driver.

was at that time?
A. Yes. Yes, during the conversation. Yes, he identified himself as Robert Lane.
Q. And this driver, Mr. Lane, is he here in the courtroom today?
A. Yes, he is.
Q. Can you point him out and describe what he's wearing to the Court?
A. Black male seated next to Mr. Sandilos. Black clothing, red and black sweatshirt that says Echo Unlimited. He's actually seated to the left of Mr. Sandilos.
THE COURT: May the record reflect that the witness has identified the Defendant, Robert Lane.
Q. Now, when you were speaking with Mr. Lane, was there anybody else in the car?
A. Yes.
Q. And how many other occupants were in the car?
A. One.
Q. And were you able to find out who that occupant was?
A. Yes.
Q. And who was that?
A. Christopher Slater.
Q. And is he here in the courtroom?

A. Yes, he is.
Q. And can you point him out and describe what he's wearing?
A. A black male dressed in tan, seated to the left of Mr. Connelly.
Q. And where was he sitting in the vehicle?
A. He was in the --
THE COURT: The record will reflect that the witness has identified Christopher Slater, Defendant Christopher Slater.
Q. And where was he seated in the vehicle?
A. He was sitting in the front passenger seat.
Q. Now, as you were speaking to the driver, what if anything did you notice at that time?
A. While speaking, attempting to find out what they were doing, I smelled an odor of raw marijuana.
Q. And is that something you smelled in the past?
A. Yes, it is.
Q. And at that time, the time of smelling marijuana, what did you do?
A. At that time, I asked Mr. Lane to step out of car.
Q. And in the meantime while this is going did any other officers arrive on the scene?

A. Yes. An Officer Jason Vinzinski (phonetic) arrived.
Q. And what does Jason Vinzinski do?
A. He's our neighborhood crime prevention unit. He has a bicycle. They ride the bicycle.
Q. SO he was not in a car?
A. No, ma'am.
Q. Okay. And can you describe before we go any further; what were you wearing that night and what was the other officers wearing?
A. I was in plain clothes. Exactly what I had on, I can't tell you that. The other officers were in their bicycle uniforms.
Q. Now, when you're wearing plain clothes, do you have any kind of police identification on you?
A. My badge around my belt. I keep that visibly -- keep that visible.
Q. Okay. And so when you -- you had asked Mr. Lane out of the car. Where was Mr. Slater at that time?
A. He was the passenger.
Q. Now, did he remain in the car?
A. Well actually, once I smelled it and had Robert Lane step out, Officer Vinzinski was there maybe seconds prior and we had Mr. Slater step out, also.

Q. And at that time, what if anything happened?
A. Detective Farabella, Sergeant Farabella saw two bag -- two little baggies on the center console of the vehicle, which is between the passenger and driver's seat
Q. Now, was that in plain view?
A. It was in Sergeant Farabella's plain view, yes. It was right on top of the console.
Q. So--
MR. CONNELLY: I'm going to object. I'm sorry. I'm going to object to his testimony and what Detective Sergeant Farabella was able to see.
THE COURT: Yeah, it does sound like hearsay to me. Sustained.
MS. WILSON: That's fine.
DIRECT EXAMINATION BY MS. WILSON:
Q. Now, as -- what if anything was found in the car at that time?
A. Two bags of crack cocaine.

Q. And after the crack cocaine was located, or what you believed to be crack cocaine, what did you do at that time?
A. I ultimately recovered it from inside the vehicle and placed Robert Lane under arrest.
Q. And did you search him?

A. Yes, I did.
Q. And what, if anything, did you locate on him?
A. He had $181 cash on him.
MS. WILSON: Okay. Judge, at this time I don't have any further questions for the detective.
THE COURT: Any cross?
MR. CONNELLY: Yes, Your Honor. Thank you.
CROSS-EXAMINATION BY MR. CONNELLY:
Q. Detective Duffield, you were here in court the last time this case was listed as a hearing. Is that right?
A. Yes.
Q. And do you recall me approaching you and while your attorney was present and asking if I could ask you a couple of questions?
A. Yes.
Q. Do you recall that we had a conversation along those lines the last time?
A. I remember meeting with you, yes.
Q. And your attorney told you to not answer my questions. Is that right?
A. No, I don't believe she said that.
Q. Well, what's your recollection of what she said?
A. I think I'm –

MS. WILSON: Judge, I'm just going to object because this has nothing to do with the direct exam.
THE COURT: Let me try to figure this out now. You're -- Mr. Connelly, you're saying that last time you were in court, you asked the Prosecutor to speak with the detective?
MR. CONNELLY: That's correct.
THE COURT: Okay. And that somehow has something to do with what occurred on the date of this search?
MR. CONNELLY: Well, it may. You know, it may have something to do with another Motion or appeal of this Motion.
Because I requested an opportunity to interview the detective while he was here the last time around and the Prosecutor wouldn't permit that.
MS. WILSON: Judge, can we approach on that?
THE COURT: Yeah. Got me confused.
THE CLERK: Off the record or on?
THE COURT: On.
(Whereupon a sidebar discussion commenced at this time)
MS. WILSON: We were here. We went into a room and if -- I told them it was up to them if they

Sidebar

THE COURT: Go ahead.
MS. WILSON: I'm sorry, Judge. He advised that he wanted to speak with him. I asked them if they had a problem with it. They said fine, as long as you're there so I said fine.
We all went into a room and that's when they said they didn't want to answer any -- they started tb answer questions but they didn't feel comfortable doing the Motion in the room.
THE COURT: Okay.
MS. WILSON: And that's basically what happened.
THE COURT: All right. I don't know why that had to be off the record. If that's what happened, that's what happened. You're shaking your head yes.
That's pretty much what happened?
MR. CONNELLY: Well, except that counsel instructed him not to discuss it and --
THE COURT: Well, that's your testimony though but --
MR. CONNELLY: Right. I mean, I can put it in a letter, too, but I wanted to get his version of it, too, because he's an eyewitness to that.
THE COURT: But what does that have to do with this Motion that I'm handling right now?

Sidebar

MR. CONNELLY: Not a lot but I think the objection was to relevance.
THE COURT: Well, that's what she did. She said it was -- that's what she objected to. That's exactly what she objected to. Mr.--
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MR. SANDILOS: I wasn't there so I don't know.
THE COURT: Okay. I just thought you – if you had -- I wanted to make sure you didn't have a –you wanted --
MR. CONNELLY: While we're at sidebar, can I (inaudible) Cassidy is reporting to court. The court has (inaudible). The Prosecutor has a copy of it. The last time we were here (inaudible).
MS. WILSON: Judge, again, I don't have a problem with that. I just don't see -- I'm going to argue it's not relevant. I don't think (inaudible).
THE COURT: Well, I don't -- you know, I don't know anything about the report so --
MR. CONNELLY: Well, (inaudible) Cassidy was on a scheduled vacation so I didn't want to burden the Court with a postponement.
THE COURT: Okay.
MR. CONNELLY: So based on us having discussed the report the last time and the Prosecutor's agreement

questions for (inaudible).

THE COURT: Oh. You just want the report –you want the Court to review the report?

MR. CONNELLY: (inaudible).

THE COURT: You going to have any objection to that, either of you?

MS. WILSON: I don't have an objection to that, Judge. I would just object to its relevance to this proceeding.

THE COURT: Okay. Again

MS. WILSON: (inaudible) when the time comes to it.

THE COURT: Okay, that's fine.

MS. WILSON: I don't have an objection to the report being reviewed by the Court.

THE COURT: Okay.

MR. CONNELLY: Yeah, I can certainly provide (inaudible) .

THE COURT: Okay. Again, what I'm trying to do is keep things in logical order here; all right? So let's finish as to what this officer can testify to about the incident on -- let me make sure my notes are -- April 30, 2008.

(Whereupon sidebar discussion concluded at this time)

CROSS-EXAMINATION BY MR. CONNELLY:

Q. Detective, how far was -- when you initially observed Mary Bowen allegedly walking towards the Defendant's vehicle, how far was she from that vehicle?

A. Well, as she was walking I passed by her at least once, maybe two times before I became stationary. So the roadway, 20, 30 feet that I passed by. Do you want to know when I was stationery how far she was from me?

Q. My question was, how far was she from the vehicle? You said that the vehicle

A. Oh, oh, oh.

Q. -- once it was parked and you decided that this was a solicitation of prostitution in the works, how far was the Defendant's vehicle from Mary Bowen?

A. Fifteen, twenty feet by the time we got behind their vehicle. She was about 15, 20 feet away.

Q. And by that, are you saying by the time you parked you -- and you were driving the undercover vehicle; right?

A. Yes.

Q. By the time you parked, she was already in motion?

A. Yeah. We let her leave. Once they drove by, circled around, drove by again and pulled in the lot,

amount of time as she got closer to the vehicle.
And that's when we left our spot and came around and parked behind theirs.
Q. So you were actually in motion yourself when you observed the flashing of the brake lights, as you mentioned?
A. No, no. No.
Q. Well, now I'm confused. Can you give -- explain this to me. Where are you parked? Or are you stationary or are you parked when you observed the flashing of the brake lights?
A. I'm stationary.
Q. Okay. Where?
A. The 500 block of Columbia Avenue.
Q. How far are you at that point from the Defendant's vehicle?
A. Oh, 50 yards maybe, 40 yards.
Q. How far is Mary Bowen from the Defendant's vehicle?
A. She was -- when we first saw her --
Q. What -- at that point in time -- I'm trying to freeze the frame right here. At that point in time when you saw the brake lights flash, you said you were 30 yards away.
A. From her, parked.

Q. Parked on Columbia Avenue, you in your car?
A. Correct. Parked from her.
Q. How far were you, okay, from the subject vehicle?
A. Between 30 and 40, I -- 35 yards, I guess, or 40 yards.
Q. Okay. Final question.
A. I'm not understanding you. How far -- at that time when they parked in that lot, you're asking me how far at that time was I from, from their car? You're asking me --
Q. No. My -- no. My question was when they - when the brake lights on the subject vehicle were flashed -
A. Okay.
Q. -- as you call it –
A. Okay
Q. where were you? How far --
A. Thirty yards.
Q. -- from the subject vehicle?
A. Thirty yards.
Q. -And were you in motion, you?
No.
Q. And then at that point in time when the brake lights were flashing, how far was Marv Bowen from the

subject vehicle?
A. Well, she remained there. She remained there –
Q. Okay, fine. Wherever she is --
A. -- as they drove by.
Q. Wherever she is, how far away is she from the vehicle, the subject vehicle?
A. I don't know.
THE COURT: You got me confused now. You're are you talking about his vehicle or the black vehicle that went by?
MR. CONNELLY: I'm talking -- I said subject vehicle because I thought that would be shorthand but I had been referring to the Defendant's vehicle.
- I mean, I'll call it whatever you want. What do you want me to call the vehicle that you eventually stopped, just so it's clear? What do you want to call it?
THE COURT: Well, let's call it the subject vehicle before the arrest, the Defendant's vehicle after the arrest. How about that?
MR. CONNELLY: Okay, sounds good.
CROSS-EXAMINATION BY MR. CONNELLY:
Q. You testified just now about where you were when the brake lights were flashing?
A. Correct.

Q. Okay. And then you told us where Mary Bowen was with reference to the subject vehicle, at the time the brake lights were flashing.
Now, my question is how far was Mary Bowen from the subject vehicle at the time the brake lights were flashed? We're making a triangle here, one side of a triangle.
A. The width of a road is only 40 feet max. They were on the far side going south. Twenty feet.
A.
Q. Was she in motion or was she stationary? She was stationary.
Q. Now, you moved your vehicle after that point, at some point; is that right?
A. At some point, yes.
Q. When did you move the vehicle after you saw the brake lights flash, your vehicle?
A. When it ultimately pulled into Morris View Plaza parking lot and parked. And like I said, after a short amount of time, as she started walking towards – in other words, crossing Vine Street onto the other corner or Morris View Plaza parking lot.
As she started walking across Vine Street is when -- you know, as she got within -- I don't know. By the time we started moving, she was probably 25 feet away

Q. Okay. So at the point when you pull up behind the subject vehicle, she's 25 feet away?
A. She's about 10 or 15. We started moving when she was about 25 feet.
Q. Okay. So when you actually pulled behind them, she was about 15 -- 10, 15 feet?
A. Ten, fifteen feet, yeah. I'd say ten, fifteen feet.
Q. And what does she do when you pull up?
A. She stayed right there. She stopped. I mean, Detective Hoydis went to her. I went up to the driver's window and spoke to Mr. Lane.
Q. Okay. She basically -- what do you mean, she stopped? You just -- did she see you?
A. Did she? I'm sure all of them saw us. I mean, we pulled right behind the vehicle. She was right there. Their car was right here.
Q. Okay. And so even though you unmarked car, your recollection is that you were the police right away, as soon up?
A. I don't know. were in an she realized as you pulled
Q. Well, you said she stopped; right?
A. Yeah, because Detective Hoydis, who is a detective, went to her and what transpired there, I

don't know. Yeah, ultimately she stopped. I mean, what else? I don't know.
Q. So she stopped as soon as Detective Hoydis explain it.
A. All three were (inaudible) at the same time.
Q. Simultaneously?
A. Correct.
Q. As soon as you stopped your car?
A. Yeah.
Q. You jump out of the car?
A. Correct.
Q. Okay. And at that point, she's 15 -- 10, 15 feet away from the subject vehicle; Mary Bowen?
A. That's accurate, yes.
Q. Now, let me go back for a second. You were stationary when the subject vehicle first went by. Is that right?
A. Yes.
Q. So you had a good look at the driver of that vehicle; didn't you?
A. No.
Q. Well, how far were they when you -- at the closest point from your car?
A. Oh, within feet. We were on the same side, the

Q. So why didn't you see the driver?
A. I don't know why I didn't see the driver. I saw two people inside the vehicle as they drove by. I didn't see the driver.
Q. Well, did you know that they were male?
A. No.
Q. Did you know that they were African American?
A. No.
Q. But you were only feet away?
A. Correct.
Q. You testified a few minutes ago that you had I a clear view of the vehicle all the way through to the point when it's 30 yards away. Is that right? When I it's pulled into the (inaudible)?
A. When the brake lights came on?
Q. Didn't you testify earlier that you had a clear view, when the Prosecutor asked you, of the vehicle?
A. As it drove by the female, yes.
Q. And also when it pulled into the parking lot?
A. That is correct.
Q. Isn't that right?
A. That is correct.
Q. So you had a clear view, except you couldn't I see who was driving. Is that your testimony?

A. I could not see who was driving. That is correct.
Q. You couldn't even tell if they were male or female?
A. No.
Q. You couldn't even tell if they were African American or Caucasian?
A. No.
Q. But you had a clear view?
A. In my opinion, of the vehicle, yes. I had a clear view, yes.
Q. Okay. So you were out on a narcotics sting; weren't you?
A. No. That's my job. I do 40 hours a week. I work plain clothes and I drive an unmarked vehicle 40 hours a week.
So we're -- we pretty much, we generate our own work. We don't get assigned cases. We generate our own type of work.
Q. And you don't get dispatched? You don't have a brief?
A. No. If we do --
Q. A mission brief?
A. -- operations, we do, yes.
Q. You do? Did you have one that day?

three of us.
Q. So you didn't have one that day?
A. No.
Q. Okay. You said earlier that one of the signals in your seven or eight arrests for prostitution, that some of the signals are hand waving or honking. Is that right?
A. Between the five and eight operations that we've conducted, several arrests during each operation, yes.
Q. Okay. So excuse me. In the eight, tops, investigations you've done on prostitution --
A. Operations, yes.
Q. Operations. Okay. But nobody honked in this case; did they?
A. No, they did not.
Q. Nobody waved?
A. No.
Q. Is it fair to say, the only indication that you had that there was some sort of prostitution transaction going on were that some brake lights would flash and the subject vehicle pulled into a parking spot?
A. That would be fair to say. That was part of the whole investigation, yes.
THE COURT: How close did Mary Bowen get to

the vehicle when you pulled up behind the vehicle?
THE WITNESS: She was within 10 to 15 feet, Your Honor.
THE COURT: But she never got to speak to anybody?
THE WITNESS: That's correct.
CROSS-EXAMINATION BY MR. CONNELLY:
Q. Now, you said earlier and ultimately, I objected to it. You can answer now. You said that there were drugs found that were first observed by Detective Sergeant Farabella in the center console of the vehicle?
A. On top of the center console, yes.
Q. What's the center console? What do you – describe that to me.
A. It's basically an armrest.
Q. An armrest?
A. That's correct.
Q. And so did you happen to notice whether it was a compartment or just --
A. No, I did not.
Q. Okay. In your experience, is it typically a compartment that opens up, as well as an armrest?
A. Some are, some aren't. I mean, some just fold up

Q. So you never searched the -- you didn't search the car?
A. No, sir. I did not.
Q. Did you find --
A. I believe we did look -- I don't know this. We did run the tag to find out who it belonged to. I did not search any of the vehicle, no.
Q. And you said you've been doing narcotics for six years?
A. Yes.
Q. If you find drugs outside a vehicle --
A. Um-hum.
Q. in plain view and you didn't search the vehicle for drugs?
A. No, we did not. They were not the registered owner.
Q. Who was the registered owner?
A. It came back to an Aaron Cavanaugh.
Q. With your training and experience, is it – does it matter who the registered owner of the vehicle is if you find drugs in it?
A. To further search it? I think so, yes. To recover what's in plain view, no.
Q. Now, you conducted an interview of both Defendants later on at the station. Is that right?

A. Yes, I did.
Q. And you -- I think it was Detective Sergeant Farabella gave them Miranda forms to sign. Is that correct? (inaudible)
A. No. Detective Hoydis because he ultimately was the guy that actually transported, with Officer Redden, both subjects back to the police station. So Detective Hoydis.
Q. Let me actually go back before I --- I don't want to miss a point. I think it's important.
THE COURT: Sir, stop that, okay?
MR. CONNELLY: Okay.
CROSS-EXAMINATION BY MR. CONNELLY:
Q. Did -- so you guys are in an unmarked vehicle. There's three of you in the vehicle. You pull up behind the subject vehicle and Mary Bowen stops ten, fifteen feet away.
Detective Sergeant Farabella – who goes after Mary Bowen?
A. I believe it was Detective Hoydis.
Q. All right. And then so you go to the I driver's side of the vehicle and then Detective Sergeant Farabella approaches the passenger side?
A. Correct.

next unit that shows up?
A. I don't know. There were -- I don't know. I know Officer Redden showed up to do a transport and Officer Vinzinski showed up, which I believe he may have been with one or two other guys. So to be --
Q. On bikes?
A. To tell you who showed up first, I can't do that. I don't know.
Q. Okay. Vinzinski, he's on bike patrol?
A. Yes.
Q. When you say he shows up with other guys, they're on bikes, as well?
A. Yes.
Q. If you (inaudible)?
A. Yes. If they were with him that night riding bikes, yes.
Q. Okay. And then in addition to that, a marked police unit pulls up, as well?
A. Ultimately, yeah, a marked police unit shows up for transport, yes.
Q. Okay. Let me get a time frame. You can't remember exactly who all was there. Let me get a time frame from you.
So you approach the driver's side. So how soon before-- or before or after -- let me ask you

this. Strike that. Let me rephrase.
Did the bicycle unit, the first one, show up before or after you approached the driver's side of the vehicle, subject vehicle?
A. It was after. Not much after. Seconds. I don't know if they were in the area and heard the call go out. I don't know but it wasn't very long.
I can't give you a time because my main focus was on Mr. Lane at the time.
Q. Okay. And I think you testified earlier that there was some conversation that occurred between yourself and the driver of the subject vehicle before you say you detected the odor of raw marijuana. Is that right?
A. Yes.
Q. So is it fair to say then that the bicycle unit at least was there, in addition to the unmarked vehicle you were driving, at the time that you detected what you considered raw marijuana?
A. Yes.
Q. And then how soon after the bike unit shows up does the marked police unit show up for transport?
A. I can't give you a time. Minutes. I mean, it didn't -- - it's not like it took an hour for us to do an

transcript. So I can't give you an exact time. I don't know.
Q. Was it before or after you detected the odor of raw marijuana?
A. I don't remember.
Q. Could it have been before?
A. I don't remember, sir. I don't know if it came there. I don't recall.
Q. Did you recognize Mr. Lane when you pulled up to the car?
A. No, I did not.
Q. You hadn't seen him around before?
A. No.
Q. Were there any other vehicles in the parking lot at the time?
A. I'm sorry?
Q. Were there any other vehicles in the Morris View parking lot at the time?
A. I don't remember.
Q. There could have been vehicles there?
A. I'm sure there could have, yes.
Q. Okay. Are you familiar with that area?
A. Yes, I am.
Q. That neighborhood?
A. Yes.

Q. Are you aware that people park in that parking lot --
A. Yes.
Q. -- overnight?
A. That is correct.
Q. Did you also determine where the -- where Mr. Lane resides or did reside at the time?
A. Not during the initial field inquiry, no. I-no. After the arrest and processing, then of course I found out where he lived.
Q. And where does he live?
A. I do not recall.
Q. If I said it was 517 Columbia Avenue, would you have any reason to disagree?
A. At the time, I don't know, sir. lives now.
Q. I understand that.
A. Okay.
Q. But would you have any reason to disagree if I told you that where he lived at the time he was arrested was 517 Columbia Avenue?
A. I can't agree or disagree because I don't remember without --
Q. Okay

Q. That's fine. Where -- do you know where 517 Columbia Avenue is relation to Morris View parking lot?
A. Yeah. It's, I don't know, 60, 80 yards. It's the 500 block of Columbia Avenue where I was so I was say it was 70, 80 yards maybe.
Q. I think that's all I have at the moment. Let me just double-check, if you don't mind. The Court's indulgence. A couple more questions.
So you testified earlier that there was no traffic. Does that mean there were no cars at all on the road?
A. I don't remember seeing any cars. I remember it was a very, very quiet night and I don't remember seeing any vehicles other than the subject vehicle that particular night.
I mean, ultimately throughout the night, yes. But during that time frame, it was a very, very quiet night.
Q. But it is a main drag; is it not? In that-- you said it was a main intersection in Millville.
A. High Street is, which this area is only two blocks off of High Street.
Q. And then you -- let me -- the Defendants were brought back to the station. That was Millville Police

Station; right?
A. Yes.
Q. You conducted a taped interview. Is that right?
A. Yes.
Q. Okay. And let me ask you this first. Where was the -- you said the marijuana that was found in Mr. Slater's possession or what you believed in Mr. Slater's possession was actually in a --
MS. WILSON: Judge --
MR. CONNELLY: -- coat pocket. Is that right?
MS. WILSON: -- I'm going to object. That was never elicited from this witness. He wasn't the one who placed Mr. Slater under arrest.
MR. CONNELLY: I thought he testified to the marijuana recovered.
MS. WILSON: He testified as to what was located in the car.
THE COURT: Well, how is it relevant to the initial -- I mean --
MR. CONNELLY: I'll get there, Judge.
THE COURT: -- let me just try to figure, out: what we're doing here. This is a Suppression Motion to find out whether there was a -- whether it was

An investigatory stop, a suspicion of whatever. That's the first issue. And then whether the conduct of the officers thereafter, leading up to them see -- having the two individuals exit the vehicle and an officer seeing contraband in the vehicle.

Whether that was reasonable or not. Isn't that where we are on this Motion?

MR. CONNELLY: Precisely.

THE COURT: Okay.

MR. CONNELLY: That's where I'm going.

THE COURT: Well, so -- and then -- but the point is, if -- who had it in their pocket doesn't matter because that would be fruit of the poisonous tree because an arrest is already made.

The time period we're talking about is the time they see the vehicle drive by, or the investigation of prostitution, the vehicle drives by. It wasn't enough for an investigatory stop.

If I'm wrong, tell me. And then were their actions correct in lieu of everything, the totality of the circumstances, to have the -- because apparently they couldn't see the narcotics in the vehicle until they got out of the vehicle.

Was it right to have them come out, get out of the vehicle? And then you have plain view and then

an arrest. And everything that follows thereafter is not part of this -- I can't see, part of this Suppression Motion. Am I wrong on that? If it's not, tell me.

MR. CONNELLY: You're absolutely right, Judge. Where I was going was, it's Defendant's position that the officer could not have detected marijuana.

That was ultimately located in the passenger side of the vehicle in a plastic baggie, inside a jacket pocket that was worn by another individual.

That is a super human feat of olfactory sensation that it's just not --

THE COURT: But which baffles the Court is why, quite frankly, since you're bringing that up, is why you would smell raw marijuana.

To my estimation, raw marijuana is tough unless you have a great amount and unless you're, you know, a canine. But why you wouldn't search the vehicle. But that's not to this Motion either.

I have the same question you do but it has nothing to do -- I mean, if you're going to -- if the question is, I guess, whether the officer's testimony that he smelled raw marijuana was reasonable.

Then I think it's proper to ask where it was discovered in that context

MR. CONNELLY: That's precisely my point, Judge.
THE COURT: Do you disagree, Ms. Wilson?
MS. WILSON: No, Judge.
THE COURT: Okay. So I'll allow the question for that reason then.
CROSS-EXAMINATION BY MR. CONNELLY:
Q. Where was the marijuana recovered?
A. In the jacket pocket of Christopher Slater.
Q. And you said he was seated -- when you came up and said you smelled marijuana, he was then seated in the passenger seat?
A. Yes, he was.
Q. And you approached the driver's side door.
A. That is correct.
Q. Is that right?
A. Yes.
Q. And then the marijuana that was recovered, what was it ultimately recovered in?
A. It was --
Q. It was in a plastic bag; right?
A. It was a plastic bag. I'd have to look at it again but yes, it was ultimately a plastic bag. Yes.
Q. A Ziploc bag?
A. Without being able to look at it again, I don't

recall. It was in a plastic bag. I don't know if it was Ziploc. It was -- I don't recall.
Q. And the pocket, was it velcro, was it snapped, was it not -- did it have no fastener?
A. I wasn't the officer that actually found it and -- so I don't know.
THE COURT: Were there two stashes, it stashes of marijuana found or just one?
THE WITNESS: Just one, Your Honor.
THE COURT: One.
MR. CONNELLY: One bag.
THE COURT: How much marijuana was in the bag?
THE WITNESS: I don't have lab was in the bag? results but it was quite a bit.
THE COURT: Okay. So it was like, if you're taking a ---
THE WITNESS: I believe it was at least –
THECOURT: -- quart baggie, was it a half a quart baggie, a quarter quart baggie?
THE WITNESS: I believe it was over 50 grams.
THE COURT: Okay. That gives me an idea. All right.
THE WITNESS: I mean, it was nice -- it was a nice size, Your Honor.
THE COURT: All right.

CROSS-EXAMINATION BY MR. CONNELLY:

Q. All right. And this is also relevant, I believe, based upon Your Honor's recommendations earlier. I just need to prove it up somewhat.

You took a statement from both of these Defendants?

A. Yes, I did.

Q. At the station early the next day, early morning. It was the same evening but it was after midnight; correct?

A. Correct. Um-hum.

Q. And you asked about –

MS.WILSON: Judge?

THE COURT: Let's hear what he's going to say.

MS. WILSON: Okay.

MR. CONNELLY: I'm sorry?

THE COURT: Go ahead. I want she's going to object but I want to hear the question before she objects to it.

MS. WILSON: That's fine, Judge. I was going to wait.

MR. CONNELLY: Okay. You -- this is going again to credibility of the statements that were made about the stop. This is all this is. This is credibility.

THE COURT: Go ahead. Ask the question.

MR. CONNELLY: The credibility of the police report and the statements that the officer has made and (inaudible) make to that.

MR. CONNELLY: You asked about the drugs that were found in the coat pocket; didn't you, of Mr. Slater?

MS. WILSON: Judge, I'm going to object. That's a Miranda Motion and that's not while we're here. If that's an issue, he can file an appropriate motion.

But I think we're just here for the stop and what was recovered as a result of the stop, not what happened after the stop.

MR. CONNELLY: Judge, I'm going to -- I can show -- I have the tapes. They're very short interviews. He asked about the drugs that are in the pocket.

He gets an explanation as to those drugs that's in the pocket, my client's pocket, on both of those, from both clients, both Defendants.

THE COURT: Yeah, but that -- they --

MR. CONNELLY: He doesn't ask about the drugs that were allegedly found that were in plain view on

those drugs.

That goes to the credibility of the statement that the drugs are there in plain view. Because a diligent police officer is going to search the vehicle.

A diligent police officer is going to – when he has an opportunity, he's got the cat in the bag, as it were. He's got the -- the Defendant's giving statements.

THE COURT: That maybe so but that doesn't I mean they can't make the decision not to.

MR. CONNELLY: That's true but it's incredible. It is incredible.

THE COURT: He's already -- and he's already answered the question that he didn't search the vehicle.

MR. CONNELLY: I understand, Judge.

THE COURT: Okay.

MR. CONNELLY: But then my --

THE COURT: And the fact that he didn't ask about the CDS on the console, which was not marijuana, has nothing to do whether there was a smell out of that CDS or not.

MR. CONNELLY: I agree but it had some a -- I lot to do with whether their -- our position is that I the drugs were not in plain view. They were not in

plain view on the console.

And here's the theory. The theory is they were not in plain view. They were concealed in the vehicle and that's why it wasn't an issue.

Because the vehicle came back to a difference registered owner and they couldn't -- they knew that they weren't going to be able to prove, unless they were going to misstate the facts in some fashion.

That these drugs in the console were constructively possessed or actually possessed by one of the two Defendants in this case. It's -- it is critical evidence.

And if. it were true, they would have been asked about the drugs in the console in the interview, which was not done. Any officer with six years experience is going to make that investigation.

And I agree, they would also search the vehicle but I -- that is evidence that the statements that are in the police report about the drugs being in plain view and that the marijuana was smelled, is evidence.

THE COURT: I hear you but I don't under -- you're going to have to explain to me again how that relates to why -- to tell the Court that it was not in plain view.

MR. CONNELLY: Because the officer, the only reason that we -- the only way we know it's in plain view is based on the statements of the detective and the other officers that were there.

THE COURT: Right.

MR. CONNELLY: Okay. They're in the police report. That's one statement that the officers made. They stated that the drugs were in plain view on the center console. He's reiterated that today, Judge.

My suggestion is that I'm trying to elicit evidence now that undermines the credibility of that statement, which I think is --

THE COURT: Ask the -- I'm going to allow the question to be asked. I mean, go ahead. I just -- I'm intrigued by how that has anything to do with it. Go ahead, ask the question.

MR. CONNELLY: All right.

CROSS-EXAMINATION BY MR. CONNELLY:

Q. You didn't ask any questions of the Defendants when you interviewed them back at the station about the drugs that were found in the console; did you?

A. Your Honor, I haven't had a chance to review the -- I don't want to prematurely -- I don't know. I don't remember the exact -- I don't have a transcript

in front of me for me to review. So I don't know exactly what was asked and what wasn't asked.

Q. But you agree, if it's important enough to put in a police report, it's probably important enough to inquire of the alleged --

THE COURT: But he said he doesn't know so your inquiry is over for this stage; okay? Without the statement being here.

MR. CONNELLY: Well, I mean, all right. I'd like to play the tapes.

THE COURT: Well, it has nothing I don't find it has anything to do with whether this was a valid --

MR. CONNELLY: Well, I'll use it to refresh recollection, Judge. I mean --

THE COURT: It has -- but it still has nothing to do with whether they saw it in plain view or not.

MR. CONNELLY: Well, I disagree. Your Honor wants -- that's fine.

THE COURT: You're saying if they didn't it -- the reason they didn't see it in plain view is -- let's assume for a minute the officer did not ask about -- him any questions about who possessed or owned the drugs on the center console; okay?

doesn't make sense. There's two answers to that question.

THE COURT: All right. I understand what you're saying in that regard but again --

MR. CONNELLY: Either it's not true, which is what I'm trying to show, or he's not very good at detecting narcotics crimes or prostitution crimes.

I mean, either way it's damning evidence to the State and that's wholly relevant.

MS. WILSON: Judge, this isn't even the officer who's going to testify as to what he saw. That question was objected to because he wasn't the actual officer who observed in plain view the narcotics.

So that officer hasn't even testified yet so I don't know where we get here.

THE COURT: I'm like, let's just stop this line. I'm not going to allow this line of questioning. I just-- again, you're talking about evidence that was found.

I you have a question, Mr. Sandilos, ask it. I don't mind. Straighten me out here. Straighten us out. Do you have something to add?

MR. CONNELLY: I yield to Mr. Sandilos on this I matter, if he does.

MR. SANDILOS: I think what he's trying to get

at, and I'm not going to be that much more eloquent about this. But maybe he's trying to get at the fact that, especially about the questions that were asked later on.

As to what -- as to the officer's ability to be lawfully in the viewing area, to have seen what they had seen.

And especially with regard to the odor of raw marijuana and I think that's where Mr. Connelly is trying to go with this.

THE COURT: Yeah, I fully understand that.

MR. CONNELLY: That's not really it.

THE COURT: But how does it relate to the evidence of -- I take it, it was cocaine or heroin or whatever? I don't remember what it was.

MR. CONNELLY: The --

THE COURT: On the center console.

MR. CONNELLY: Because logically and based on this officer's testimony about his training and experience in detecting narcotics crimes.

A detective with that training and experience, if given the opportunity to interview the suspects, would ask about possession of the drugs that they're alleging they possessed, in an interview and it just is not there.

THE COURT: But you're not saying they don't exist. You're saying they exist. They were either found on top or on bottom. So whether they asked about them or not doesn't matter.

MR. CONNELLY: Right. But it impeaches -- my view and the Defendant'-s view, it's an impeachment of this officer's credibility and the credibility of the officers that state that they were in plain view.

THE COURT: That he didn't ask the question at all?

MR. CONNELLY: That no questions were asked when an opportunity arose to ask the Defendants about the drugs in the console or on the console. I mean, they're talking a taped statement.

They asked about the drugs in the pocket and they got the answer. They got answers consistent from both Defendants.

They weren't asked about the drugs in the console. What does that indicate to Your Honor? Does that make sense?

THE COURT: It indicates --it may indicate that they decided it was -- belonged to both of them. It belonged to everybody in the car because everybody saw it on the center console so it belonged to everybody.

That could be what they decided it means. It doesn't mean anything to me that they didn't ask the question. It means -- I get your issue about the baggie and whether they could smell and whether they could it.

I mean, you could take judicial notice – I could take judicial notice of whether you could or you couldn't, I guess. I don't have an expert here.

I know that if you have a half -- 50 grams of marijuana in a baggie sealed up, you're still going to smell it in the motor vehicle that's closed up. You're just going to.

I mean, I went through the same training. It's just a fact, you're going to smell it. I don't know whether he smelled it that day or not. I have to go by, like you're saying, the credibility of this officer.

And that credibility goes to a lot of different issues, like you're saying. You know, whether in fact they -- why they didn't search the vehicle.

But because they didn't ask questions about the stuff that's in -- on the center console, if they didn't ask who owns it, I don't think makes a

Because they may have decided, may have decided that it belonged to both of them. They both had it between them. Both of them could see it. It's both, it's theirs; okay?

I just don't see the issue and it's too far, to my mind, beyond where we are in this Motion.

MR. CONNELLY: I'm going to beat a dead horse, Judge.

THE COURT: Okay.

MR. CONNELLY: Let me just respond just very -- one sentence. One sentence.

THE COURT: Well, you're whipping it pretty good.

MR. CONNELLY: I know. I know. I know. It's beyond dead. It's decomposing. If that were the case, wouldn't they have asked the question of both and then they've got them nailed on constructive possession?

THE COURT: I don't know. The point is, wouldn't they -- I don't know.

MR. CONNELLY: Right.

THE COURT: That officer's not here, that I can -- to tell you what -- I mean, I haven't heard that they -- that the officer say he found it. This officer's saying he -- he's the one that picked it up.

He's saying after the other officer said, I

see it, he went and retrieved it from the location. Which I think is as good as, except we might need the other officer here to testify that he actually saw it.

MS. WILSON: And he's here, Judge.

MR. CONNELLY: Right. But he didn't interview the Defendants. I mean, the officer that saw the drugs in plain view didn't interview the Defendants.

THE COURT: And I just told you; I don't know that that's going to make --

MR. CONNELLY: That's right. I understand.

THE COURT: -- a difference to the Court's determination. Because there could be a plethora of reasons why you wouldn't ask the question.

MR. CONNELLY: I just want it to be clear that I --

THE COURT: Not -- none of them lead to the conclusion, in my mind, of anything I believe that you told me, that could lead me to the conclusion of well, the officers were lying.

They really found it in the -- under the console instead of on top of the console.

MR. CONNELLY: That's fine, Judge.

THE COURT: Okay?

MR. CONNELLY: And I would just like to note

the witness with extrinsic evidence and/or refresh his recollection with the statements.

THE COURT: I understand.

MR. CONNELLY: Thank you.

THE COURT: Officer, let me ask you a question. You see the vehicle pull into the parking lot; right?

THE WITNESS: Yes.

THE COURT: Brake lights are blinking before it goes around the block; right?

THE WITNESS: Prior to, yes.

THE COURT: You stop the vehicle. You get you don't even stop the vehicle. The vehicle was already stopped.

THE WITNESS: Correct.

THE COURT: You got behind the vehicle?

THE WITNESS: Yes.

THE COURT: You walked up to the vehicle and you asked him what he was doing and the gentleman said, I dropped my cell phone. I'm trying to find it.

Would not the fact that he dropped his cell phone conceivably be a reason he's touching the brakes, reaching for his cell phone if it's at his feet?

THE WITNESS: That would be reasonable. Yes, Your Honor.

THE COURT: Okay. So my point is, there could have been some other reason that they're blinking their lights, except for the fact that they were signaling a prostitute?

THE WITNESS: Yes, that would be a possibility, yes.

THE COURT: Okay. Second thing; you know she was walking up to the vehicle. Did you see her do –her or they do anything other than blinking lights, go around and stop, that would have led you to believe and I think you've already -- that there was a prostitution deal going on?

THE WITNESS: At that point, no. With the precursors, did I believe? Yes.

THE COURT: I understand. You had the precursor but you understand that when you pulled up there, she turned around and walked away.

So then nothing else could have occurred, which could have heightened your expectation or suspicion that there was actually a prostitution deal going down?

THE WITNESS: That is correct, sir.

THE COURT: So at the time you went up to the car, you were going to ask them and expected them to admit that they were?

THE WITNESS: I would say yeah. I mean, I was going to go out and find out what they were doing. I mean, I believed what I believed. I believed that he was going there.

So yeah, I was going to pretty much ask questions, find out what they're doing, what's going on.

THE COURT: Okay

THE WITNESS: Proactive policing.

THECOURT: I understand.

MR. CONNELLY: Nothing further, Judge. Thank you.

THE COURT: Mr. Sandilos?

MR. SANDILOS: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. SANDILOS:

Q. Now, Officer, when you saw the -- when you saw Ms. Bowen and you said she was walking on Vine towards Columbia. Is that correct?

A. Yes.

Q. And she had reached a corner. She was walking. Were you able to describe what she was wearing at that time?

A. No, sir. I do not remember what she was wearing.

Q. Okay. And likewise, you didn't place that in the report as to what she was wearing. Is that right?

A. That is correct.

Q. Okay. You also, in your report -- and when was the last time that you reviewed your report?

A. Today.

Q. Okay. Was it prior to coming into the testimony today, to -- starting your testimony?

A. Yes.

Q. All right. You also didn't -- would it be fair to say that you also didn't put in there how fast she was walking or the style of walk that she engaged in. Is that correct?

A. That is correct.

Q. And let me be a little more specific. That -- you don't have in there that she was walking quickly or that she was in a slow and deliberate walk or anything like that. Is that correct?

A. That is not in there. That is correct.

Q. Would it be fair to say, because it's not in there, you didn't make those observations as to how she walked?

A. Can you repeat that one more time?

Q. Sure. Would it be fair to say that, because you didn't have those observations in your report, that you didn't in fact make those observations? Is that right?

A. That is correct.
Q. You had mentioned -- and I'm going to get to this a little bit later. But you had mentioned that there -- that at that time of night, there wasn't much traffic. Is that correct?
A. Yes.
Q. There was very little traffic?
A. Yes.
Q. Did you see other cars in the area pass by?
A. I don't remember seeing -- I don't remember. I'm sure throughout the night, yes, but during that time frame, I do not remember any other cars being in that area, no.
Q. Did you notice any other cars pass by Ms. Bowen?
A. At the time we were watching her, no, other than ours.
Q. And you may have testified to this on direct and with Mr. Connelly's cross, but how long were you watching, were you actively watching Ms. Bowen?
A. We came across her. Minutes.
Q. It was one of those things where you just happened to see her as you were driving on Columbia; correct?
A. Well, we were either on Buck or Vine. I can't

remember but yes, we were just doing like routine patrols.
Q. All right. There wasn't a point in time when she aroused your suspicion by approaching other cars or flashing money or anything to that nature. Is that correct?
A. That is correct. She did not.
Q. And just as you testified earlier, there wasn't anything that aroused your suspicion by the way in which she was dressed. Is that correct?
A. That's fair. Yes.
Q. Okay. And again, she wasn't dressed in a provocative manner. Is that right?
A. That is correct. That I remember anyway.
Q. That you recall?
A. Right.
Q. Knowing that at this point in time your attention is focusing on Ms. Bowen and knowing what you -- I guess what your -- what -- looking back on your investigation, it would have been relevant had you made those observations?
To make those observations as to Ms. Bowen's dress. Is that correct?
A. I wouldn't say it would be relevant. I mean, I knew her. I knew her past. It really wouldn't have

mattered what she had on that particular night.
Q. Okay. You don't know if she was actively working that night; do you?
A. No, I do not.
Q. You didn't have any other calls concerning her on the radio or anything like that?
A. Not that particular night, no.
Q. You had -- what other areas of the city had you been in that night?
A. I don't 'remember. I'm sure there was various but I do not recall.
Q. You don't remember seeing Ms. Bowen in other parts of Millville that night; do you?
A. No. I believe that was the first time we saw her that night.
Q. So that was the first time you'd seen her?
A. I believe so, yes.
Q. You didn't know whether -- any other activity she had been engaged in that night. Is that right?
A. That's correct.
Q. So the only think that you did was you saw her walking and then you see a car coming by and flashing its lights; correct?
A. Flashing the brake lights, yes.
Q. The brake lights. And by flashing the brake

lights, we're not talking about the kind of – putting on the emergency lights.
We're talking about actually stepping on the-- what appeared to be stepping on the brake lights? Is that correct?
A. Yes.
Q. I'm assuming because you could notice the middle, that middle light usually in the window or above the rear window light up, as well?
A. I don't remember the third -- you're talking about the third brake light?
A. Yeah.
Q. I can't say one way or the other. I know I remember the brake lights flashing but I don't recall if there was a third brake light or there was none.
Q. Okay. Because that would give you a clear indication as to whether or not somebody was actually stepping on the brake light. Is that correct?
A. What, seeing them flash or seeing the third brake I light?
Q. Seeing the third brake light?
A. Just the brake lights in general would that. But yeah, if there was a third brake light, yes, that would go off, too.

vehicle was slowing down by Ms. Bowen, again you don't notice any other vehicles. Is that right?
A. Yes, that is right.
Q. Okay. You were-- you don't see any other pedestrians. Is that right?
A. Correct.
Q. That area, and you may have described it on direct and I really don't mean to go over it again. But that area is kind -- is a -- I guess a triangular area? Is that correct?
A. The parking lot.
Q. The way the streets are configured and the parking lot is basically the shape of an odd triangle?
A. Yes.
Q. Okay. Because what you have is, I guess, Vine, Columbia and Buck making like a three cornered parking lot? Is that correct?
A. They all come together, yes.
Q. All right. And the Morris View, I guess senior housing, is on what street?
A. It would be 1 -- Number 1 East Vine Street.
Q. Okay.
A. But it's on Vine and Buck and Mulberry.
Q. All right. And Vine street is a street that runs east and west. Is that correct?

A. Yes.
Q. Okay. Buck Street will run north and south?
A. Correct.
Q. Columbia is in this diagonal, more north?
A. Yeah, I would -- yeah. More north/south, I would think, than east/west.
Q. Okay.
A. Or -- yeah.
Q. That night you didn't have any problem with weather or anything like that. Is that correct?
A. Not that I remember, no.
Q. Now, when you made these observations of Ms. Bowen, you make the observation of the vehicle, were you able to determine whether or not the vehicle that Mr. Lane was in or was driving had been -- when –was – did you see whether or not his window was down?
A. At -- when he drove by?
Q. Yeah.
A. Or when I approached?
Q. When he drove by.
A. No, I couldn't tell.
Q. Were you able to determine whether or not there was any conversation between Mr. Lane and Ms. Bowen?
A. No, I couldn't.

Q. Okay. So when he's driving by, you can't see whether or not there's any conversation. Is that correct?
A. Correct.
Q. You didn't see Ms. Bowen make some type of interaction with Mr. Lane, as he's driving by. Is that correct?
A. No. As he drove by, no.
Q. Okay. I mean, you didn't see her trying to flag him down. You didn't try to see him – her crossing the street to approach him or anything like that. Is that correct?
A. When he drove by her the first time with the brake lights?
Q. Yes.
A. No. No.
Q. Mr. Connelly had asked you about where Mr. Lane lived. The fact that he lived at 517 Columbia Avenue. And I think that you had testified that you didn't recall, unless you could see something that might refresh your recollection. Is that still true?
A. Yes. I didn't remember where he lived.
Q. Okay. So if I show you the Complaints in this matter, would that refresh your recollection as to where Mr. Lane lives?

A. Yes, that would refresh the address that he gave me, yes. That's ultimately what would be put on the Complaint and the arrest report.
THE COURT: How many vehicles stopped at the scene there on the initial stop? Was it just one or two?
THE WITNESS: We had our unmarked vehicle, Your Honor, and there was a patrol car ultimately, that I can recall.
THE COURT: Was that vehicle there before you stopped to talk to them?
THE WITNESS: No.
THE COURT: In other words, when you walked up to talk to the driver, was there a vehicle in front of the vehicle?
THE WITNESS: No, sir.
THE COURT: Okay. Did you have emergency lights on?
THE WITNESS: No. I had an unmarked police car. No.
THE COURT: So you just pulled up behind the vehicle, already stopped?
THE WITNESS: Yes. Yes, it had already pulled in and parked

He just -- you showed no emergency lights or anything flashing behind him and you got out and walked up to them?
THE WITNESS: Correct.
THE COURT: Okay.
CROSS-EXAMINATION BY MR. SANDILOS:
Q. Detective, I'm going to show you what's marked as D-1S and D-2S; okay?
A. Okay.
Q. And I'll ask if you can recognize these and if these would -- if that would refresh your recollection as to the address of Mr. Lane?
A. Yes. This says 517 Columbia Avenue would be the address that he gave that particular night.
Q. Okay. Now, I think Mr. Connelly had asked you about what the distance was between the 517 Columbia and the area that you were in that night, that parking lot. Is that correct?
A. I don't think he had -- 517 I think, it was my car in the parking lot. I don't think he said --
Q. All right. Well, then 517 to your car; how --do you know the --
A. Without looking, no sir, I wouldn't know.
Q. All right. I think you had made some type of a -- correct me if I'm wrong. That from where Mr. Lane

lived was about 78 yards or something like that? Is that -- did I hear wrong?
A. I don't -- I didn't know where he lived.
Q. Okay. Well, from your you know that area. Is that correct?
A. I was in the 500 block.
Q. Okay.
A. So 517 has to be within, you know, every other number. What, eight houses, maybe? Eight houses up?
Q. So that -- the block that -- since you were in the 500 block of Columbia, then he would live in that area. Is that right? He lives within that block?
A. Yes.
Q. Obviously, living within that block, his house is very close to where all this was. Is that correct?
A. Yes.
Q. I think Mr. Connelly had also started to ask you questions concerning that there are cars in that parking lot at night. Is that right?
A. There usually are, yeah. There are some cars that park in that lot, yes.
Q. Okay. Is it your understanding, based upon the knowledge and your experience from that area, that people who live in that area tend to park their cars in

that lot?
A. Yes.
Q. So it would be fair to say that because Mr. Lane lived in that area, there would be a tendency for people such as himself to park his car in that parking lot. Is that correct?
A. I don't think I can answer that. I don't know.
Q. Okay.
A. I don't know.
Q. But generally, you know from your knowledge and experience and also as an officer and I would think as a long-time native of Millville, if I'm not -- if –are you?
A. Yes.
Q. Okay. And you've lived there basically all your life?
A. Yes.
Q. Okay. That you know that people from that area will generally use the parking lot, whether they're supposed to or not. Is that correct?
A. I can't answer. I know that the people that reside at Morris View Plaza utilize that parking lot. However, do other people use that? I'm sure.
Q. Okay. If Mr. Lane were to have pulled his vehicle in there, would it not -- is that correct?

A. No.
Q. Contrasting that, if he lived in Bridgeton or if he lived in -- out of the county and he was pulling his car in that night, that might be unusual. Is that correct?
A. Yes.
Q. When the vehicle did pull into the – into that parking lot, you obviously at some point followed it in. Is that correct?
A. We allowed it to get in and actually stop and park.
Q. Okay. So -- but you kept it in -- you kept the -- you kept observing the vehicle. Is that right?
A. Yes.
Q. Now, when you saw the vehicle enter the parking lot, did you notice any conversation between the occupants of the car and Ms. Bowen?
A. No.
Q. Were you able to see and determine whether or not the window on the driver's side was up or down?
A. Until I arrived after they parked, no, I could tell.
Q. How about on the passenger side?
A. No.
Q. You put -- you stated in your report that

THE COURT: Well, let's talk about it. If you don't mind, let's go back and --

MS. WILSON: I'm sorry.

THE COURT: -- have just a conference quick and we'll see where we're going with this and then I'll pick up on the Motions, if you want.

MR. CONNELLY: Sure.

THE COURT: Sorry about that.

MR. CONNELLY: That's fine, Judge.

THE COURT: All right. I'm going to take a break and conference this matter.

(Whereupon off the record at this time and then return to the record as follows)

THE COURT: Okay. Back on the record with Christopher Slater and Robert Lane. Okay. Officer Duffield was in the middle of cross at the time we left back on April 8. Am I correct on that?

MS. WILSON: Yes, Judge.

THE COURT: Okay. Officer, you want to take the stand again, please? You know you're still under oath, Officer, but I'm going to swear you in again because of the time, the passage of time.

If you would, put your left hand on the Bible and raise your right hand.

DET. HAROLD DUFFIELD, JR., STATE'S

WITNESS, SWORN

THE COURT: And your full name for the record again?

THE WITNESS: Harold Duffield, Jr.

THE COURT: And you recall, Officer, that you gave testimony here back on April 8, 2009, in this matter?

THE WITNESS: Yes, sir.

THE COURT: And you give -- we had completed direct examination and we were in the middle of cross when we moved the matter until today?

THE WITNESS: Yes.

THE COURT: Okay. Counsel?

MR. CONNELLY: Thank you, Judge. Judge, for the record -- I'm sorry -- briefly, Thomas Connelly for Christopher Slater. I have a witness I need to escort out of the courtroom. He'll be testifying.

THE COURT: All right. Yeah, anybody who is going to be giving testimony in this matter must leave the courtroom. Be sequestered, as it were. Continue.

MR. SANDILOS: Thank you, Judge. Judge, I don't know if I entered my appearance but Charles Sandilos on behalf of Robert Lane.

CROSS-EXAMINATION BY MR. SANDILOS:

Q. Detective, I think that the last time I left

off with you, I was basically asking about some of your observations concerning while you were up at the window or the vehicle. Is that correct? Do you recall that?
A. Yes.
Q. Okay. Before we resume today, do you remember whether or not -- or strike that. Do – have you been provided a copy of the transcript of the hearing that took place on April 8, 2009?
A. No, I have not.
Q. Okay. Did the Prosecutor provide you with any type of a transcript or anything?
A. No. I haven't been given a copy. No.
Q. Okay. All right. So you haven't seen any of the prior testimony that happened back then. Is that correct?
A. That is correct.
Q. NOW, I know that I'd asked you about your report back on April 8 of 2009 and I think that you had testified that you had reviewed it prior to your testimony that day. Is that correct?
A. Yes.
Q. Now, did you also review it prior to your testimony for today?
A. Yes, I did.
Q. And by that, I mean that you looked at it

either this morning or shortly before we all appeared here for court?
A. That is correct.
Q. Now, when I asked you about some of your observations concerning what you saw through the window of the vehicle, you were looking through the vehicle.
Is that correct?
A. Yes.
Q. Or looking through the window. Is that right?
A. Of my vehicle, yes.
Q. All right. And I think that the last -where I had last left off was your view of Mr. Lane and Mr. Slater. Is that right?
A. Yes.
Q. Do you recall that?
A. Yes.
Q. And I think that your testimony then was that you hadn't seen anything while you were looking through the window. Is that right?
A. At the window talking once we were there?
Q. Right.
A. I believe you asked me if I could see through. At that point talking, other than speaking to Mr. Lane, no I did not observe anything else in the vehicle at the time.

Q. And I think the last time we were here, we established that there was a console in the middle of -- between the two seats of the vehicle. Is that right?
A. Yes. Or an arm -- it was an armrest, a console armrest, yes.
Q. All right. And that's, again, where the gear selector was; correct?
A. I believe I could not recall whether the gear selector -- I believe it was down there. It wasn't it was up a little bit, yes.
Q. Okay.
A. It wasn't --
Q. You don't remember seeing it --
A. attached.
Q. -- on the column or anything?
A. No.
THE COURT: Excuse me. Who's this gentleman? Okay, I just wanted to make sure. I don't like people coming in after I start a hearing because I worry about sequestration issues. I don't know who you're going to be calling so --
MR. SANDILOS: Judge, I don't intend to call his father. I think his father's just here to watch.
THE COURT: Okay.

CROSS-EXAMINATION BY MR. SANDILOS:
Q. Now, one of the other things I think that you had established then was that you weren't able to –you didn't see the console. Is that correct?
A. That is correct.
Q. All right. And the reason you didn't see the console was because of Mr. Lane and Mr. Slater. Is that right?
A. From my side, it would be definitely, yes, Mr. Lane.
Q. Okay. When you had approached the vehicle, I think you testified that you had pulled up behind it. Is that right?
A. Yes.
Q. The car parked. You pulled up behind it and at that point, did you make any observations of the occupants of that vehicle?
A. Other than them sitting in it, no. Nothing more than I remember.
Q. Okay. So you didn't notice any movement or anything; what sometimes in the business is called furtive movements. Is that right?
A. Correct.
Q. You didn't see them trying to hide anything. You didn't see them trying to -- you didn't see them

acting nervous or anything like that? Is that correct?
A. That's correct.
Q. You didn't see them trying to move anything inside of the vehicle. Is that right?
A. That's correct.
Q. And the other thing that you didn't see was you didn't see them handing anything to each other. Is that right?
A. Correct.
Q. Okay. So when you pulled up to the vehicle, all you just saw was the two occupants; right?
A. Yes.
THE COURT: Can you tell me, how was the vehicle situated? You indicated the vehicle stopped in a parking lot.
THE WITNESS: Correct.
THE COURT: Were they facing going out or going into the parking lot?
THE WITNESS: Your Honor, when they (inaudible), they pulled in one of the driveways and actually pulled into a parking spot facing Columbia Avenue.
THE COURT: So they could have pulled out on Columbia Avenue?
THE WITNESS: No, sir. They could not have.

THE COURT: Okay.
THE WITNESS: I mean, if they went over the curb, yes, Your Honor. .As far as a driveway, no, they could not.
THE COURT: Where did you park when you – so they couldn't drive forward but they could back up?
THE WITNESS: No, I pulled behind them.
THE COURT: So you -- but you --
THE WITNESS: So essentially, they couldn't back up. If they went forward, they would go off the sidewalk and the curb.
CROSS-EXAMINATION BY MR. SANDILOS:
Q. Would it be fair to say that your report that you had reviewed and that you wrote, didn't mention anything about Mr. Lane or Mr. Slater, for that matter, trying to conceal anything. Is that correct?
A. That is correct.
Q. And since it's not contained in your report, it would be fair to say that it would be something that you didn't see. You didn't make those observations; correct?
A. That is correct.
Q. When you approached the vehicle, Mr. Lane rolled down his window. Is that right?
A. Yes.

Q. Or did he do that voluntarily or did you have to order him to roll it down?
A. I don't remember exactly --
Q. Okay.
A. -- how it went down. Ultimately, he rolled down the window, yes.
Q. All right. He rolled down the window. You were clearly identifying yourself as a police officer because you had your badge on your belt?
A. A badge. That is correct, yes.
Q. So it wasn't something that you were trying to hide. Am I right?
A. That is correct.
Q. And you had made some inquiries with regard to Mr. Lane. Is that correct?
A. Yes.
Q. And it was at the end of those inquiries that you began to detect some -- an odor of what you called raw marijuana. Is that right?
A. Yes.
Q. Now, the Prosecutor also had gone through some questions to you, outlining -- outlaying your –or outlining your experience as a police officer. And one of those was your familiarity with raw marijuana. Is that right?

A. Correct.
Q. And you had testified that you had gone through some courses or some training as a police officer, in being able to detect raw marijuana. Is that correct?
A. Yes.
Q. And also to determine whether -- what smelled like burned marijuana. Is that right?
A. Yes.
Q. Now, you eventually found what appeared to be to yourself, to be marijuana. Is that right?
A. Ultimately, yes, marijuana was found on Mr. Slater. Yes.
Q. All right. And I think that the last time we were here, you thought that what you had found – or you couldn't remember that it was in a Ziploc baggie. Is that right? Or what kind of packaging that it was in.
A. I believe I testified that it was a clear, plastic bag but correct, I could not -- I did not know if it was a Ziploc or just a tied plastic bag.
Q. Okay. If I were to show you the notes of the Lab Report, would that refresh your recollection as to the type of bag?
A. Yes.

Q. Okay. And also, if I were to --
A. It should. I mean --
Q. Okay. And if I were to also show you the, I guess what would be called the form that you do the submit -- the submissions to the State Police Laboratory. Would that also refresh your recollection as to the type of bag?
A. It should. You've got to understand, too, when we submit evidence to our evidence officer, she in turn, Your Honor, she in turn does her own form and submits it electronically
So I'll definitely look at these forms and let you know if they are mine or our evidence officer's.
Q. Okay.
A. So I may have put one thing. She may have interpreted it as another. I'm not sure.
THE COURT: The forms you're talking about dealing with the alleged evidence that was in the console; right? On the console? marijuana.
MR. SANDILOS: Yes.
THE COURT: Okay.
THE WITNESS: Oh. I thought you said the
MR. SANDILOS: Well, yeah. I'm talking about the marijuana. It's got all the --

THE COURT: The marijuana in the jacket, though-
THE WITNESS: Correct.
THE COURT: -- allegedly. So how does that have anything to do -with what we're doing right now?
MR. SANDILOS: Well, I think it has a lot to do with it because one of the reasons that the police officer is able to get these -- the gentlemen but of the car is that he's saying that he smells marijuana.
So I think how it's packaged goes to some way to testing his credibility on that.
MS. WILSON: That's fine.
MR. SANDILOS: Now, if he doesn't remember that --
THE COURT: Well, I'll let you continue but I don't -- I see -- I don't see that as being relevant but I'll let you try to show me how it is. It's more relevant whether they saw anything on the console or not.
Do you know, Officer, when you pulled up behind the vehicle, were there other -- was yours the only vehicle there?
THE WITNESS: Your Honor, I don't remember. I believe that was one of the questions asked. I don't remember. As far as police vehicles or other parked

vehicles?
THE COURT: No, police vehicles.
THE WITNESS: Okay. Actually, one other one. It was a patrol vehicle, which was -THE COURT: A marked unit?
THE WITNESS: Correct. Which was the transport unit.
THE COURT: That -- when did that arrive?
THE WITNESS: After the arrest, Your Honor.
THE COURT: Okay.
THE WITNESS: There were bicycle units there, which I believe there were three.
THE COURT: At what times?
THE WITNESS: It was -- I don't have exact time, but it was close to when we got -- they must have heard it over the air. I'm not sure but it was within close -- less than a minute.
THE COURT: Okay.
CROSS-EXAMINATION BY MR. SANDILOS:
Q. I'll show you what's marked as D-3 and ask you to take a look at that and see if you recognize that form.
A. This would be the form that's generated by our evidence officer.
Q. Okay. Did you review that at all?

A. This? No.
Q. Okay. There are certain items that are listed on that form. Is that correct?
A. Yes.
Q. And some of those items list what was seized by you and the other officers. Is that right?
A. Yes.
Q. And it seems that there are three items that are seized are those items that are I guess described as a white substance, a white rock-like substance in a plastic bag. Is that correct?
A. Yes.
Q. Okay. And then I think it's item number two is described as a greenish vegetation that's in a plastic bag. Is that correct?
A. Yes.
Q. Does that describe the type of plastic bag?
A. Like I test -- a clear, plastic bag. It does; a clear, plastic bag with green-brown vegetation.
Q. Okay. Now, I'll show you what's marked as D-4 and represent to you that that's the notes of the laboratory chemist that tested the -- now, on there again, item number two would be the marijuana that was later found. Is that correct?
A. This is the first I've ever seen this type of

form. It's saying number two, item number; clear, plastic sandwich bag containing vegetation.

Q. Vegetation usually would be what was – what people would suspect to be marijuana. Is that correct?

A. Yeah. You would -- that was how you would describe it, yes.

Q. It also lists a weight in there. Is that right?

A. Of item number two?

Q. Yeah.

A. Yes.

Q. Okay. And what -- if I'm not mistaken, it's 27.796 grams. Is that correct?

A. 27.96 grams, yes.

Q. Okay. Now, when you had testified about the marijuana, you testified that you thought that it was more than 50 grams. Is that correct?

A. Yes, that is correct.

Q. Okay. Would this refresh your recollection that it was not 50 grams? That it was substantially less than 50 grams?

A. At the time, we did not have a lab sheet in front of me and yes, I did believe it was over 50 grams. However, if this is a true lab examination, which it's the first time I'm ever seeing this type, it's saying

yes.

Specimen number two, which was the vegetation, was 27.796 grams.

Q. Okay. On the top there, it also lists number two. It says sandwich bags and then it says – it looks like ZL. And do you know whether or not that stands for Ziploc?

A. Sir, I don't know. That's my -- and this isn't certified.

MS. WILSON: I'm going to object. This isn't even his notes. This was the chemist notes that he has never seen before.

THE COURT: And I don't see the relevance. I mean, I'll take judicial notice. I mean, I've had training and if you could smell raw marijuana through Zip bags. That's not even taking into consideration that it's in and out of a pocket with a jacket. So I don't find it entirely or especially relevant, the whole line of questioning.

MR. SANDILOS: Judge, it is relevant. First of all --

THE COURT: Well, if you were sitting here, maybe it would be but to me, it's not. I'm more concerned about the -- whether this was a field

inquiry.
How -- whether they felt they could leave or not. And whether there was anything in plain view when they first walked up to the vehicle.
MR. SANDILOS: Well, Judge, with all due respect, you don't have the right to limit our cross-examination, ~s to the issues that are involved in the -- as to what you think are relevant.
THE COURT: But I think you would be –
MR. SANDILOS: What is relevant also --
THE COURT: I think it would be instructive to you when you tell -- when I'm telling you what I'm looking at.
MR. SANDILOS: Okay.
THE COURT: But if you want to go off in your own direction, do it. record.
MR. SANDILOS: Judge, I have a right to make a
THE COURT: You certainly do. Go ahead.
MR. SANDILOS: Thank you. I intend to.
CROSS-EXAMINATION BY MR. SANDILOS:
Q. Now, the -- this vegetation that was found was just in the plastic bag. You don't recall whether or not it was a Ziploc bag. Is that correct?
A. That is correct.

Q. All right. And again, you would agree with the amount of weight that I showed you, with regard to the Exhibit D-4 that I showed you?
A. According to that paper you showed me, item – specimen number two, without me looking at the evidence or a certified lab report from a chemist.
According to that sheet you gave me, that is correct. The clear, plastic bag with vegetation showed
27., I believe, 796 grams of marijuana.
Q. Are you aware, as to the amount of -- as to what it would be in ounces or how much that converts to the English weight?
THE COURT: How's that relevant?
MR. SANDILOS: I'm sorry?
THE COURT: How's that relevant?
MR. SANDILOS: Well, I think it gives us an idea, because it does convert to just under one ounce, .96 ounces.
THE COURT: And I take judicial notice of
MR. SANDILOS: Thank you. Thank you. As long Court is willing to take judicial notice of
And I can give the Court the exact weight, if okay.
THE COURT: That's fine.

MR. SANDILOS: Actually, Judge, what I can give you is that 28.35 grams equals one ounce. So we can agree that that was -- that the amount was a little bit less

THE COURT: Than an ounce.

MR. SANDILOS: -- than an ounce.

CROSS-EXAMINATION BY MR. SANDILOS:

Q. At the time that you said that you had smelled raw marijuana, you had -- did you tell the other officers that you had smelled the raw marijuana?

A. I don't recall if I told anybody. At one point, yes. When I asked Mr. Lane to step out, I don't know if I yelled across the car but yes. Once he was asked, you know, out of the car, whoever was there, of course, yeah.

THE COURT: Why did you ask him out of the car?

THE WITNESS: Because of the smell, Your Honor.

THE COURT: When did you smell it? Did you smell .it when you were retrieving the other?

THE WITNESS: NO, sir. I smelled it while talking to him.

THE COURT: From outside the car?

THE WITNESS: That is correct.

THE COURT: Okay.

CROSS-EXAMINATION BY MR. SANDILOS:

Q. Did any of the other -- at this point, you're standing at the driver's side window; correct?

A. Yes, I was.

Q. Detective Farabella was there. Is that right?

A. Yes.

Q. And he was standing where?

A. He was on the passenger side.

Q. On the passenger side?

A. Correct.

Q. And do you recall whether or not that window was open?

A. No, I do not.

Q. Okay. Now, there was a third officer there, as well. Is that correct?

A. There were a few officers there. Yes, sir.

Q. Okay. There were other officers?

A. Yes.

Q. And where were those other officers standing?

A. I mean, who do you want to know? I don't know exactly--

Q. Well, there was an officer --

A. --where each one--

Q. Okay.
THE COURT: How many officers were there total at the initial field inquiry, what I'll call a field inquiry?
THE WITNESS: The in~tial field inquiry would have been three. That would have been -- Detective Hoydis would have been the third.
THE COURT: Your car was parked behind their vehicle?
THE WITNESS: Correct.
THE COURT: You're at the driver's side. There's another officer that's at the passenger side. And where's the third officer?
THE WITNESS: Detective Hoydis, I'm not sure. He was with the female.
CROSS-EXAMINATION BY MR. SANDILOS:
Q. There was also an Officer Vinzinski. Is that right?
A. Which carne -- the initial pull-behind and get out, he was not with us. It must have been heard over the air. He carne there within a short amount of time. I mean, I don't know if they were just in the area but he did ultimately corne there, also, yes.
Q. So you said Detective Farabella was on the passenger side and you were on the driver's side--

A. Yes.
Q. -- with the open window. Detective -- or Officer Vinzinski carne a little bit later. Is that correct?
A. Yes.
Q. At the time that he carne, was Mr. Lane out of the car already?
A. I don't remember.
Q. Your report doesn't reflect that at that point. Is that correct?
A. That's correct. I don't remember.
Q. You -- do you remember where Officer Vinzinski was standing?
A. He was on the passenger side.
Q. He was on the passenger side?
A. With Detective Farabella.
Q. Okay. And were there other officers with you on the driver's side?
A. I don't remember anybody else, other than myself, on the driver's side.
Q. Okay. So you're the only there; correct?
A. Yes.
Q. So -- and you're the only one that can testify as to whether or not you smelled anything. Is that correct?

A. Yes.
Q. You announced
A. From my side.
Q. On your side.
A. Yes.
Q. There were no other officers that told you that they had smelled any raw marijuana. Is that correct?
A. Nobody told me, no.
Q. Okay. So you were at that point the only officer that had made that –that detected an odor. Is that correct?
A. Yes.
Q. And at that point, you told the other officers about what you believed you had detected. Is that correct?
A. Correct. I don't know how I did it but yes, that is correct.
Q. Well, they're on the other side. Did you --
A. I don't know if I yelled or –
Q. Did you yell?
A. I don't remember how but yes, I did advise everyone there.
Q. All right. And when you told them that you had made that -- detected an odor of what you said was

marijuana and at that point, you then began to order Mr. Lane out of the car. Is that right?
A. Did I tell them first and then pull him out? I don't know. Did I pull him out first and then tell them? I can't answer that.
Q. Okay.
A. I don't know when exactly but ultimately, yes, they were told.
Q. All right. If I showed you your report, would that help clear anything up?
A. I can take a look at it.
Q. All right. Detective, I'm going to show you what's marked as D-5 and ask you if you recognize that exhibit.
A. Yes, I do.
Q. Is that your report?
A. Yes, it is.
Q. Do you -- is -- as to whether or not you had announced the fact that the -- what you detected or pulled Mr. Lane out of the -- or requested Mr. Lane to get out of the -- ordered Mr. Lane to get out of the car. Would it refresh your recollection to review that report determine -- to determine what order it happened?

A. No, this doesn't help me.
Q. Okay. Is that because it's not in the report?
A. Yeah, that's not in the report. That is correct.
Q. So as we stand here today, we can't make a – we don't know what came first; either making the detection or ordering -- announcing?
A. It could have been -- yeah, I don't know. It could have been simultaneous. I don't know.
THE COURT: Officer, at the time you pulled up behind the vehicle and you get out and the other two officers get out of the vehicle, was your intention just to ask questions or were you doing an investigation?
THE WITNESS: Your Honor, I was attempting to find out what was going on with the circumstances that I had leading up to it. And yes, I was just going to ask.
THE COURT: If they could have pulled out, would they have been allowed to pullout and leave?
THE WITNESS: Well, with out car behind them, I'd probably have to move my car or they'd have –
THE COURT: But would you have if he'd have said, I don't want to talk to you? Or would you have gone forward?

THE WITNESS: I don't know, Your Honor.
THE COURT: Very well.
CROSS-EXAMINATION BY MR. SANDILOS:
Q. Detective, when Mr. Lane finally got out of the -- he cooperated with your request. Is that right?
A. Yes.
Q. He didn't heBitate. He didn't protest or anything like that. Is that right?
A. That's correct.
Q. SO that when you did order him out of the car, you didn't make any observations once he was out of the car. Is that correct?
A. Incorrect.
THE COURT: Making observations of what?
MR. SANDILOS: Well, I'll make the car – the question more specific

CROSS-EXAMINATION BY MR. SANDILOS:
Q. When you ordered him -- and I'll withdraw that question. When you ordered him out of the car and he eventually, he did get out of the car; correct?
A. Yes.
Q. When he got out of the car, you looked inside; did you not?
A. My main focus was on him so I did not look in the car right away, no.

Q. Okay.
A. With the smell of marijuana, of course he's asked to step out and actually, when they asked the other, the passenger to step out, was when the other detective --
Q. Well, I'm just talking about what you did.
A. Okay. Did I?
Q. Did you look inside the car? When I had him step out, at that time, no.
Q. So you never at that point looked inside the car to see what was in the car at that point. Is that right?
A. No. My main focus was on Mr. Lane.
A. How -- where did you take Mr. Lane at that point?
A. He was escorted back a little bit from the driver's door.
Q. Did you handcuff him?
A. No, sir.
Q. You just, you held him and moved him back. Is that correct?
A. That is correct.
THE COURT: Are those pleas ready? Those two pleas are ready?
UNKNOWN SPEAKER: Almost.

THE COURT: Let me know when they are. Go ahead.
CROSS-EXAMINATION BY MR. SANDILOS:
Q. So it would be fair to say that when you removed Mr. Lane from the car, you didn't make any observations as to the interior of the car at that point. Is that right?
A. That is correct.
Q. Now, when you were removing Mr. Lane from the car, you had asked him to get out of the car. Is that right?
A. Yes.
Q. Did you touch his arm or shoulder to help him out of the car?
A. I don't remember if I assisted him out or – I believe he came out voluntarily but I don't know.
Q. Okay. And the only reason I ask this is I don't mean there was any force or anything like that.
A. Correct.
Q. I just mean that, did you help him out of the car because at that point, he was maybe not under arrest but you wanted him to go to a certain place. You wanted him to move away from the car. Is that right?
A. Away from the driver's door, yes.

Q. All right. So do you remember if you had done that?
A. I don't remember if I helped him out, no.
Q. Okay.
A. There was definitely not force.
Q. Okay.
A. Did I grab his arm? I don't know that for a fact.
Q. That's fine. I understand that. I'm not saying there was. When you ordered him out of the car, did you bend down into the car to ask him to get out of the car?
A. No.
Q. You moved him away from the vehicle and do you remember how far away you moved him?
A. Towards the rear trunk area.
Q. Of his car?
A. Yes.
Q. And Detective Farabella and the other officers were still in their same positions, that you saw. Is that right?
A. Well, it was pretty much simultaneous. When I escorted Lane out of the car and walked him back, I mean, that's when everybody knew I smelled the marijuana. So essentially that's when they -- the other side

asked Mr. Lane [sic] to get out of the vehicle. So it was within the same time frame.
Q. I think they -- the Judge had asked you about the number of officers. I don't think you had a number. Is that right?
A. I don't have an exact. I can tell you who I know definitely that were there. I didn't have an exact number for him. No, sir.
Q. Okay. And we do know that it was you, Detective Farabella and Officer Vinzinski; correct?
A. Correct.
Q. And were -- do you know the other – any names of the other officers that were there?
A. Detective Hoydis and Patrolman John Redden.
THE COURT: And they were -- again, you're confusing me with the questions and the answers. What's relevant to me is who was there at the time of the initial stop. But you're saying there was three or now five individuals there at the time of the initial stop?
THE WITNESS: Your Honor, initially there was three of us in the one vehicle so three of us at the initiail stop. And then ultimately, the other officers came shortly after the fact.
CROSS-EXAMINATION BY MR. SANDILOS:

Q. All right. The Judge also had asked you. A question concerning the position of your car to the position of Mr. Lane's vehicle. Is that right?
A. Yes.
Q. And you had pulled up right behind his vehicle, if I'm not mistaken. Is that right?
A. Correct.
Q. And how close was your vehicle to Mr. Lane's vehicle?
A. I don't know, sir.
Q. It wasn't -- there wasn't enough room that he would have been able to back out and leave. Am I right?
A. I would probably have to move my vehicle before he could back up and leave, yes.
Q. So that you deliberate -- you did move the car and you did put the car into the spot. Is that correct? Knowing that you wanted to talk to these two gentlemen.
A. I can't answer that. I don't -- why would I have purposely blocked him in? No. Was it just a tactical thing for myself and the safety of us getting out? We have the vehicle to use. More than likely.
Why that particular spot behind him? I can't sit here

and say why we did that. Maybe just my instincts of being a police officer. I don't know but that's the way it was.
Q. And with that initial stop, again, there was one officer on -- you were on the passenger -- or on the driver's side and two officers were on the passenger side; correct?
A. Yes.
Q. Did you ever ask permission to search the car?
A. No, I did not.
Q. Okay. There was no time that you turned around and said to. Mr. Lane, may I search your car or do you give your consent to the search of your car?
A. I did not, no.
Q. Was there ever a conversation between you and Mr. Lane concerning bringing a dog on the scene?
A. No, sir.
MR. SANDILOS: Thank you. "I have nothing further.
THE COURT: Mr. Connelly?
MR. CONNELLY: Briefly, Judge, thank you, if I may.
CROSS-EXAMINATION BY MR. CONNELLY:
Q. Detective, do you recall when you were making

MS. WILSON: And Your Honor, I'm going to object to them playing the tape. It's not authenticated, I don't believe.

THE COURT: Well, this officer can tell whether it's his voice or not; right?

MS. WILSON: Right. But we also have other communications on there.

THE COURT: All we're relevant is whether this officer reflected --

MS. WILSON: That's fine, if the Court's going to let him play it.

THE COURT: Well, what I'm understanding you're bringing it is as to whether the officer will remember whether he called it in or not?

MR. CONNELLY: Yes, Judge.

THE COURT: Which I find to be entirely relevant to this case, quite frankly.

MS. WILSON: That's fine.

THE COURT: It's a real narrow box I'm looking at, quite frankly. It's what was the reason for the stop? I want to know whether it was a -- whether it was a substantiated field inquiry.
Whether it was a -- an actual stop, whether it was an investigatory stop, whether it was a field inquiry.

They're -- whether there was probable cause.
I mean, those are the three issues I'm concerned with and there's a narrow (inaudible) in time I'm really looking at.

MR. CONNELLY: I agree, Judge. The tape's critical.

MS. WILSON: If the Court's going to play it, the State's going to just put their objection on the record because it hasn't been authenticated.

THE COURT: But the authentication issue deals with whether this officer can recognize his voice and whether his memory is recollect -- is any recollection of what he did that night in that small time period.
Of when he was getting ready to either do a field inquiry or do an investigatory stop. Is that what it's about? That's what I'm understanding.

MR. CONNELLY: I agree, Judge. And I think it's a bit disingenuous of the State to object to evidence that they provided in discovery to us as the authentic --

THE COURT: Well, I'm not going to get into that right now. But my point is, I'm not accepting it for any other proof other than the -- to let the officer determine whether his memory is refreshed by the -- by hearing the tape, as to what occurred at the time of the stop.

MR. CONNELLY: I agree. I believe a foundation's been laid and he can testify if it's his voice.

THE COURT: Yeah, I agree.
MS. WILSON: Okay. That's fine.
THE COURT: Your objection's overruled. Let me handle this --
MS. WILSON: Are you going to cue it up to the right spot?
MR. CONNELLY: I don't know what the right spot is. I'm going to play the tape.
THE COURT: Let me explain something to both of you, okay, right now. You talk to the Court. You don't talk to each other. If you want to argue, you argue through me. We're not going to let it disintegrate to that; okay? Please.
MR. CONNELLY: Yes, Your Honor.
THE COURT: Judge keep it right.
MS. WILSON: Okay.
THE COURT: I'm going. to handle this search warrant and I'm going to see if these two pleas are ready.
UNKNOWN SPEAKER: They're not quite ready,

Your Honor.
THE COURT: Okay, thank you.
(Whereupon off the record for a brief recess and then return to the record as follows)
THE COURT: -- Robert Lane and Christopher Slater. Mr. Connelly?
MR. CONNELLY: Yes.
THE COURT: Just for the record, we've been trying to get the disk, DVD disk or disk to play and I understand you have an apparatus coming over that will hopefully play it. So I've asked you to maybe go into a different line of questioning so we're not wasting time until it gets here.
MR. CONNELLY: Yes. And my apologies to the Court for the technical failure.
MS. WILSON: Judge, I'm just -- I'm kind of confused here. I thought Mr. Connelly already did his cross. Mr. Sandilos did his cross. I thought we were on redirect so I'm kind of confused.
THE COURT: Oh. We didn't go to redirect because I didn't know Mr. Connelly had done cross yet.
MS. WILSON: He did.
THE COURT: I didn't remember since last April.

MR. CONNELLY: Well, I did most of my cross, Judge.

THE COURT: Okay. Do you want to have the redirect now?

MS. WILSON: I just had a couple questions and then I guess they could follow up with whatever I ask.

THE COURT: Well, I'll let you two -- if you want to yield? I apologize. I didn't know that Mr. Connelly had not had his bite at the apple back in April when we left this off.

MS. WILSON: Okay.

MR. CONNELLY: I had a partial bite of the apple, Judge.

THE COURT: Okay.

MR. CONNELLY: That's fine. I yield to – the floor to the Prosecutor.

THE COURT: Okay. If you want to redirect, that's fine.

MS. WILSON: Okay.

REDIRECT EXAMINATION BY MS. WILSON:

Q. Detective Duffield, now Mr. Sandilos back in April spoke to you about Mary Bowen and what she was wearing. Do you remember that?

A. Yes.

Q. And he brought up the fact that in your

report, you didn't note what she was wearing. Is that correct?

A. That is correct.

Q. Now, despite not noting .that in your report as to what she was wearing, did you still recognize this person as Mary Bowen?

A. Yes, I did.

Q. And had you seen her on other occasions?

A. Yes. Yes, I have.

Q. Okay. So was there any doubt in your mind that this was Mary Bowen walking down the street?

A. No, there was not.

Q. And now, I just want to talk about the time frame. I want to talk about the time frame from the time you saw Mary Bowen walking down the street until the ultimate arrest of the Defendants. Can you estimate for us how long that was?

A. Ten minutes.

Q. And when you walked up to the car, you had testified that you parked behind Mr. Lane's vehicle?

A. Correct.

Q. And from the time you approached the vehicle and asked him a question, until you smelled the marijuana, how long was that?

A. Less than a -- less than five minutes.

Q. So you -- when you were asking him, it was less than five minutes after you started smelling the marijuana?
A. Yes. And I'm sure a lot shorter than that but that was less than five minutes, yes.
MS. WILSON: Judge, that's all the State has right now.
THE COURT: So if it was five minutes of conversation, there's no doubt you were conducting an investigation at that point then; right?
THE WITNESS: Your Honor, I considered it a field inquiry into the actions that I observed. The few questions that were asked before
MR. CONNELLY: I'm going to object and move to strike. That's a legal conclusion. The witness isn't qualified to give that testimony. I'm sorry, Judge. I'll stand up. Objecting, moving to strike.
THE COURT: I will not take that into consideration. Granted. But my concern was just whether you were asking questions beyond were you going to solicit that young lady?
THE WITNESS: Right. No, no, sir. If I could five minutes. If I could -- it was definitely under five minutes. The questions that I asked him, it took me no more than a minute.

It was just, everything happened at once, Your Honor, and to get an exact time frame, I -- that's why I said, definitely under five minutes but I'm sure it was under, way under that.
MR. CONNELLY: Thank you.
RECROSS-EXAMINATION BY MR. CONNELLY:
Q. Detective, I want to talk to you a little bit about your training. You testified previously that you had some training at the police academy. Is that right?
MS. WILSON: This is outside the scope of the redirect, Judge. I'm going to object.
THE COURT: It's overruled. I'll let him answer it briefly.
THE WITNESS:
RECROSS-EXAMINATION BY MR. CONNELLY:
Q. Were you at the police academy?
A. Yes, I was.
Q. And how long?
A. Four months.
Q. And you had some
A. March 3 to July 14, 1995.
Q. And did you have training in -- when you were there, you had training in controlled smells, as you call them; right?

A. One of my continuing schooling was called narcotics -- Drugs for Patrol Officers and that is when the -- all the controlled smells and raw smells were performed, yes.

Q. And they were performed live. Is that right? They give you a subject substance and then they ask you how do they work? Just tell me.

A. During the training, of course visual observation of the drugs that you encounter on the street. And with marijuana, the distinct smells, that was also part of the training.

Q. And so what do they do? Present you with something and then ask if you smelled anything?

A. No. They would -- the instructors would identify the marijuana and pass it around the classroom and allow each individual officer to -- it's called a controlled smell.

Q. Okay. So you knew -- all right. So you knew it was marijuana. You were given marijuana and you smelled it arid that's a controlled smell?

A. Part of that course, yes. That was part of the, yes, the training, yes.

Q. Okay. Is that your training when you said you had training in detecting narcotics last time? Is that the extent of it? Somebody gave you marijuana and

you smelled it?

A. Along with my experience and all o£ my arrests. That was the initial, yes.

Q. Okay. Let me talk a little about your training and doing vehicle stops. Let's assume for a second that when you radioed back to HQ in this case, you said vehicle stop.

Now, when you do a vehicle stop, are you trained to try and box a vehicle in if it's possible?

A. You're definitely trained to conduct a motor vehicle stop the safest for you. So there is training, yes.

Q. Well, I think you said earlier that you pulled up behind the vehicle and you said on other testimony that it was your instinct that led to that, as if--

A. It may have been. I said I really didn't – I wasn't sure why it was parked -- I parked right behind it. However,' it could have been my instinct.

Q. But you were trained at the academy in making vehicle stops with another vehicle; right?

A. Yes, we did.

Q. And to do that, when you do that training, are you taught to pull up behind a vehicle so they can't easily escape?

A. Yes. That would be correct.
Q. Okay. And then --
A. Well, not escape; for your safety.
Q. That's really a matter of semantics.
A. If you're pulling behind them, they can definitely but for your safety, yes. We're trained to – on how to conduct a motor vehicle stop.
Q. Well, there's no doubt that your safety is a -- it's certainly got to be a concern; right? But if it was all about your safety, you wouldn't get close to a car. You'd give them plenty of room.
A. It's always about safety and I wouldn't say plenty of room. I mean, you want a little cushion for various reasons but --
Q. Why do you want a little cushion?
A. Distance between you and the vehicle? You don't want to be right up on them.
Q. Why?
A. Just for safety reasons? I mean, you create a distance. God forbid something bad happens, it increases your chances of survival, you know?
Q. I understand but what about --
A. You can get away from it quickly.
Q. -- why not go too far away? What's the problem then?

A. Well, then if you're too far away and you're walking up, then you don't have any cover if something should bad go down, as your vehicle that you're making the car stop.
Q. Okay.
A. Are you with me?
Q. I'm with you.
A. Okay.
THE COURT: I don't know if that's totally relevant but let me ask a question that you started to hit upon. Suppose the vehicle did not pull into the parking lot and stop. Was it your intention to stop the vehicle for this field inquiry?
THE WITNESS: No, sir.
THE COURT: So you wouldn't have called another vehicle to try to stop the vehicle if it didn't stop?
THE WITNESS: No, sir.
RECROSS-EXAMINATION BY MR. CONNELLY:
Q. So when did you call for backup? Before or after you smelled the marijuana?
A. I don't recall calling for backup. Like I testified to you, it was all simultaneous. The fourth and other guys came as it was occurring, as I was bringing Lane out of

the vehicle or shortly before.

The three guys that were on location initially were just myself, Detective Sergeant Farabella and Detective Hoydis.

The other guys came. I never called for them. They must have heard it over the radio and were there in the area and that's when they arrived.

But no, if the vehicle, Your Honor, had kept going straight, from what I observed and nothing else occurred, the facts, no I would not have made a stop.

THE COURT: Well, I guess maybe you didn't understand my question. The vehicle pulls in the parking lot and stops; okay? Suppose it didn't pull in a parking stall and stop and then 30 seconds later while you're approaching, pulls out. Would you have stopped it then?

THE WITNESS: No, sir. If -- certainly with the female walking towards it and getting close and then us pulling in. And then they may have, knowing our undercover vehicle, then yes, I probably would make a motor vehicle stop. But if they just pulled in the parking lot and then pulled right out and nothing else happened, the female stayed where she was?

THE COURT: No. But that's -- the female did not stay where she was. That's my point. The vehicle stops in the parking lot, the female walks up to it, up to the car. You start to pull in and then the vehicle just pulls away. Would it be your intention to stop the vehicle at that point?

THE WITNESS: Yes, sir.

THE COURT: To continue the investigation?

THE WITNESS: Yes, I would.

THE COURT: Okay.

RECROSS-EXAMINATION BY MR. CONNELLY:

Q. Certainly, once you got out of the car, if they had taken off at that point once you're out of the car, you would have gone after them? Let's say they were able to drive away. Had they driven away, would you have gotten back in the car and run them down at that point?

A. After I initiated a field inquiry? Then that would raise -- that would --

Q. Well, I don't want to talk about legal language.

A. Well

THE COURT: Don't worry about the legal language. I understand. You don't have a jury here.

A. No, sir.
Q. Is it fair to say when you pull up behind a car, before you get out, part of the reason you did that, whether it's instinct or it's police training, was to prevent this -- the -- at that point the suspects from fleeing? Isn't that right?
A. That was not what was on my mind, sir. I -- like I said, I testified that I was not sure why I pulled that way. There was no intention -- I didn't go there saying oh, I'm going to block these guys in. No, sir.
MR. CONNELLY: And then -- the Court's indulgence for one moment.
THE COURT: I think your tape player's here.
MR. CONNELLY: Excellent.
RECROSS-EXAMINATION BY MR. CONNELLY:
Q. Okay. And you're familiar with that intersection in Millville; right?
A. The one -- yes. Columbia and Vine, yes, I am.
Q. And you said you were familiar with Mary Bowen?
A. That is correct.
Q. I think at the last hearing you believed, based on your experience with Mary Bowen, that she was a prostitute.

A. Yes.
Q. Is that right? But at the time, you didn't know her rap sheet. You didn't have that in your head; did you?
A. Absolutely. Because I've made several arrests or have been with guys who have made all the arrests.
Q. The entire thing? You know her entire criminal history and that's just in your brain. that it?
A. I have a lot of knowledge about people in the streets, just based on what I do every day. And yes.
Q. Okay. Let me ask you this. Are there areas of Millville that are known for prostitution?
A. There are areas, yes.
Q. And that's one of them; right?
That would be, yes.
Q. And clearly, if you have a known prostitute, she's probably going to be in a known prostitution area. Is that right?
A. That is correct. Yes, sir.
Q. In your training and experience on the street, have you ever known prostitutes to solicit innocent parties? People who have no intention of actually picking up a prostitute?
A. I would agree with that. That is correct.

Q. And if you heard testimony, hypothetical testimony that somebody pulled into a high prostitution area for who knows what; to pick someone else up. A friend, neighbors. Is it possible that a prostitute would come to that car and just attempt to solicit sex?
A. Yes.
MR. CONNELLY: I'd like to try and play the tape now. That's all I've got.
THE COURT: Let me get a offer of proof. What are you saying the tape says?
MR. CONNELLY: The tape gives a definite time line from the point that the stop is called in by Detective Duffield and then the other units arriving.
It gives the timing of the arrival of the other units. At least when they've called in. It gives us at least the earliest point at which they are at the scene. And quite frankly, I'm not clear -- it also tells us what Detective Duffield said when he responded to dispatch and --
THE COURT: Well, okay. Let's try to get because I'm not concerned with what happened even 30 seconds after the stop, quite frankly. I'm concerned with who was there when this car was held at that 30 seconds to a minute time period.

MR. CONNELLY: Okay.
THE COURT: That's where you make a determination of whether there's a field inquiry proper or whether it's an investigatory stop proper or not, in my mind.
MR. CONNELLY: I understand, Judge. But I mean, a key point I think is the time when he smells the marijuana.
And I think it's possible that there was a third unit and maybe a fourth unit at the scene before that was smelled. I mean, at some point this field inquiry turns into --
THE COURT: That's fine. That's why I'm allowing
MR. CONNELLY: -- a stop.
THE COURT: -- the tape to be heard. I'm just trying to get an idea of what I'm listening to.
MR. CONNELLY: Absolutely. I also want to find out what Detective Duffield had in his mind. Now it's a field inquiry but I'm pretty sure I remember him saying a vehicle stop when he called it in.
THE COURT: Okay. Okay. Ms. Wilson, could I impose upon you to check with Mr. Ostrowski and see if I they're ready on those matters?
MS. WILSON: Sure, Judge.

MR. CONNELLY: (inaudible)
THE COURT: Just something like he played it on before or no?
MR. CONNELLY: (inaudible)
MR. OSTROWSKI: (inaudible)
THE COURT: All right. What I wanted – just when you're ready, just let me know.
MR. OSTROWSKI: That's fine.
THE COURT: I don't want you to think that we're -- whenever you're ready, you let me know.
MR. OSTROWSKI: (inaudible).
THE COURT: Well, that's a good sign. I hear he's a --
MR. CONNELLY: (inaudible) this tape. They're ten seconds each. I don't know for certain when this top was called in. It might have been the entire long tape. There's really no other reports so
THE COURT: Well, again, I'm not taking any of this for evidence.
MR. CONNELLY: Okay.
THE COURT: I'm going to let the officer listen to it and then if it refreshes his recollection, he can testify to what his recollection is' at that time.
MR. CONNELLY: Okay. Well, let me just play them all.

THE COURT: I understand that's why you're playing it.
MR. CONNELLY: If I can take a moment (inaudible) and then just ask the officer to identify, you know, when he hears his voice (inaudible) and stop us.
(Whereupon police dispatch tape was played for the Court at this time and then return to the record as follows)
MR. CONNELLY: It wasn't there. Are we on the record, Judge? Okay.
RECROSS-EXAMINATION BY MR. CONNELLY:
Q. that was probably Lane. He's a co-Defendant. You heard (inaudible)?
A. Yes.
Q. Do you know who was (inaudible)?
A. That was me.
Q. That was you?
A. Yes.
Q. Okay. And what unit were you?
A. 939.
Q. Did the tape begin with 939 or was there another unit?
A. There were several other units and none of them

were me.

Q. I'm going to start that again and would you please --
A. Urn-hum.
Q. stop me and tell me, that's my unit, as soon as you hear your voice?
A. No, I heard it. There was no -- none of them were me
Q. Okay.
A. prior to tape
Q. But you actually heard your voice on that Correct. ,
Q. --that I just played?
A. Correct.
Q. And how do you know it's your voice? By number and that's my voice.
Q. That sounds like a (inaudible) but –It was me.
Q. You identify your unit number? Correct.
Q. And you hear yourself on that tape?
MR. CONNELLY: I'd like to admit the entire
THE COURT: Well, the tape has to show -- the tape

---

doesn't do anything for me. I'm not -- it had the reason for the tape was to see if it refreshed his recollection into -- as to your question.
MR. CONNELLY: That's true.
THE COURT: As to when the stop took place. The tape is not evidence. It's merely -- it's like a report. I'm treating it like a report.
MR. CONNELLX: Right.
THE COURT: What does he recall? Does it refresh his recollection, if I'm understanding the question, as to whether he called the stop in or requested for a backup prior to the inquiry? Prior to the stop, let's call it.
MR. CONNELLY: Yeah, that's fine.
RECROSS-EXAMINATION BY MR. CONNELLY:
Q. Let me ask the question again. We started with a question and then we had a break and now we're back to the initial question. Or one of them was, what did you radio that call in as?
A. Sir, I don't remember what I radioed it in as. That last transmission, is what you're asking me what that was?
I don't recall how that was after the fact so I don't know how I called it in, whether it was called in right away or not. But that right there was after the fact.

Q. So you don't even know, based on this tape? The first time you hear your voice is you're calling in for an ID on Robert Lane?
A. A warrant check.
Q. A warrant check?
A. Yes.
Q. And that's the first time you hear your voice?
A. That is correct.
THE COURT: Presumably, the stop was three to five minutes before that.
THE WITNESS: That is correct.
MR. CONNELLY: And -- okay. So
THE COURT: The question is, does anything about that tape refresh your recollection about what you did just prior to the stop?
THE WITNESS: No, sir. It does not.
THE COURT: Okay.
MR. CONNELLY: Well, I don't know that I have the complete tape.
THE COURT: Sir, you're -- there's not we're in the middle of a Motion here.
MR. CONNELLY: That's right.
THE COURT: You presented this tape because you

wanted to see if it would refresh his recollection. It has not, apparently. Just as if you're producing a police report and saying read it; does it refresh your recollection? That's all it was presented for.
MR. CONNELLY: I understand, Judge. But I need to present the rest of the tape now because I need to see if --
THE COURT: What rest of the tape is there? I don't know that -- he's not testifying there was any and the State's saying they gave you what was part --
MR. CONNELLY: In this hearing, Judge, the detective was asked whether he could --if he could recall the time frame with regard to the other units arriving on the scene. He said he couldn't remember. He was very unclear about that. I'm going to use the tape to refresh his recollection as to the other units because they may be on the tape.
THE COURT: Well, did you -- do any of those sounds on that tape indicate that a vehicle was responding to your location --
THE WITNESS: No, sir.
THE COURT: -- that you know of?
THE WITNESS: No, sir.
MR. CONNELLY: The tape's not over.

THE COURT: What's that?
MR. CONNELLY: It's not finished.
THE COURT: Well, I don't want to hear the rest if it's -- if what you -- the spot we left off was him asking ID information on Mr. Lane. Obviously, that's well after the stop. I'm concerned with the time of the stop.
MR. CONNELLY: I understand, Judge. It's not obvious to me that he's got a -- he testified he has a handheld radio. He could be standing there next to Slater, for all we know, radioing in that warrant check.
What I want to know is, when did the otherunits arrive and that's going to be on the tape. He was asked, when did the other units arrive? He said, I don't remember. It could have been five minutes. It could have been 30 seconds.
THE COURT: What part of the tape are you going to play now?
MR. CONNELLY: The rest of it.
THE COURT: The rest of it is all
MR. CONNELLY: I stopped it. I stopped it on track three.
THE COURT: Oh. So you're saying there are other tracks that go back?
MR. CONNELLY: They go forward in time.
THE COURT: Forward in time. But what's forward in time help me? I'm concerned with --

MR. CONNELLY: The arrival of the other units. It may not -- they may have arrived before.
THE COURT: I'm assuming from what I'm hearing, sir, that there were no other units on the scene at the time of the stop. And I think he indicated that.
Do you have anything on -- my concern, is there anything on this tape that would refresh his recollection that there, in fact, were units to help him stop the vehicle?"
MR. CONNELLY: I believe there could be.
THE COURT: Could be? On the tape, you're telling me that shows that?
MR. CONNELLY: Yes.
THE COURT: Play that portion but it has to be before what you just heard; doesn't it?
MR. CONNELLY: No. Because he may have radioed a warrant check before the other units arrived. Isn't it possible?
THE COURT: Did you?
THE WITNESS: No, sir.
THE COURT: He's already testified he asked for the --

that it was after. You're on a fishing expedition now.
I allowed the tape in because you told me it was going to tell -- give me conversation at the time of the initial stop and it might reflect his – refresh his recollection. That was the limited purpose.
MR. CONNELLY: No, I understand, Judge. That's fine. And that -- and
THE COURT: The tape doesn't do that apparently.
MR. CONNELLY: I'm done. I'm done with the tape. But I am going to request on the record that the PD provide the Defendant with a copy of that dispatch tape that proves that -- he's got the time that he made the stop in the police report.
I want the dispatch tape leading up to that time.
THE COURT: Suppose he didn't call anything in. How are they going to produce a tape?
MR. CDNNELLY: I think it's highly unlikely, considering his testimony about his training and experience --
THE COURT: But you're fishing.
MR. CONNELLY: -- and experience, that he's not calling in a stop.

THE COURT: You're fishing now. They've produced the tape that you say you had the stop on. If you're saying there's additional tape, then you have to ask that of them. I'm in a Motion here. I'm trying to decide this Motion on what you're submitting.
MR. CONNELLY: (inaudible).
THE COURT: And you're submitting this tape, sir, to tell me -- to allow me to have the witness refresh his recollection. That was the limited purpose. Let's not forget that. I'm not taking it as evidence. Nothing on that tape is evidence to me. It's like the police report. It's not evidence to me. He's using it to refresh his recollection. Apparently, what you have here does not refresh his recollection. It's over as far as I'm concerned. I mean, I wouldn't let you read from the police report.
MR. CONNELLY: Fine. I understand.
THE COURT: The rest of the police report.
MR. CONNELLY: But normally when you refresh recollection, there -- the rule says that the witness has an opportunity to hear the entire -- to read the entire document.

THE COURT: I am only concerned, sir, with the time period --

MR. CONNELLY: I understand.

THE COURT: -- of the stop.

MR. CONNELLY: And Your Honor, I accept Your Honor's judgement on that issue but I object. I'd like to play the whole tape for him.

THE COURT: Okay. That's -- the tape – from that point on, it doesn't have anything to do with refreshing his recollection as to whether any other vehicles were at the scene or not, at the time he made the initial stop, inquiry or whatever we're going to call it.

And I was -- for the limited purpose, based upon the objection from the State, was to allow you to see if you could refresh his recollection. That has not happened.

MR. CONNELLY: I'd like to present it as refreshing his recollection on the sequence of events, after he radioed to dispatch in regards to Robert Lane for a warrant, check. That's all we really know. I believe there's more on the tape. I'll leave it to Your Honor's --

THE COURT: More to show what? To show what?

MR. CONNELLY: All right. I'll withdraw it.

You've overruled.

THE COURT: Your point is, you keep talking and you're saying there's more on the tape. I understand there's more on the tape. The tape could go on for the next three hours.

But the point is, that next three hours has nothing to do with the initial stop.

MR. CONNELLY: The whole issue in this case is when -- whether we have a stop and when

THE COURT: There we go.

MR. CONNELLY: -- so I think it's highly relevant.

THE COURT: There you go.

MR. CONNELLY: That's my proffer.

THE COURT: And you're telling me that something on the tape after he called it in is going to say what -- anything about the stop?

MR. CONNELLY: Yes.

THE COURT: It's incongruent. You -- he's saying when he called in the records check, he had already been with the vehicle two to five minutes. 7

MR. CONNELLY: I understand, Judge, and that's fine. I -- just overrule my request and it'll be on the record and I'm fine with that, Judge.

THE COURT: Okay, got you.

MR. CONNELLY: Thank you. So the request then to refresh his recollection with the entirety of the CD that I've been provided, is denied?
THE COURT: Yes.
MR. CONNELLY: Thank you.
THE COURT: Because my whole ruling, again, was to try to
MR. CONNELLY: I understand.
THE COURT: -- refresh his recollection as to the time of the stop. I'm not hearing it is in evidence.
MR. CONNELLY: Which again, I would argue respectfully, is that that
THE COURT: Well, I heard that. No.
MR. CONNELLY: -- that's the ultimate issue in this case, Judge. So in any event, I have nothing further at this time.
THE COURT: Okay. Are you ready?
MR. OSTROWSKI: We're ready.
THE COURT: Any redirect?
MS. WILSON: No, Judge.
THE COURT: Any recross?
MR. SANDILOS: No, Your Honor.
THE COURT: Okay. Do you have any other witnesses?

MS. WILSON: I do, Judge, but –
THE COURT: Okay.
MS. WILSON: -- he can wait until the –
THE COURT: Why don't we step back and I'll take this plea, if you don't mind. And then we'll pick up again.
THE WITNESS: Am I excused, Your Honor?
THE COURT: Just for the time being, yes.
THE WITNESS: Thank you.
(Whereupon off the record to handle other matters at this time and then return to the record in this matter as follows)
THE COURT: Okay. If we could come in on the Christopher Slater and Robert Lane matters. Do you want to bang on the door and see if Mr. Connelly can come in? My understanding is -- back on the record in the Christopher Slater and Robert Lane matters. My understanding is, you were done with that officer; right?
MR. CONNELLY: Yes, Judge.
THE COURT: And you have another witness and that is?
MS. WILSON: Sergeant Farabella, Judge. It's actually two more witnesses. I have him here and I

have Jason Vinzinski, also.
THE COURT: You have what?
MS. WILSON: I have two officers left. The one officer is limited to just the search incident to arrest.
THE COURT: Okay.
MR. CONNELLY: I have a witness, Judge. Okay. Can -- are you available to maybe pick this up tomorrow morning? Are you going to be here tomorrow? Is he going to be held over anyway, this gentleman?
MR. CONNELLY: Yes, Judge.
THE COURT: Are you available to come in tomorrow morning, Counsel?
MR. CONNELLY: I have to call my office. I don't believe so.
MS. WILSON: I'm here but --
MR. CONNELLY: Maybe I'll -- it may besomething I can reschedule but I've got an 11:00 o'clock.
THE COURT: What's that?
MR. CONNELLY: I have an 11:00 o'clock in Philadelphia tomorrow morning.
THE COURT: Okay. Because what I'd like to dois give this an hour tomorrow and get -- are you available tomorrow, Officer Farabella?

Sidebar

MS. WILSON: No, he's actually -OFC.
FARABELLA: Yes, sir.
THE COURT: Are you available at 9:00 o'clock tomorrow morning?
OFC. FARABELLA: Something just popped in my head. We're executing a warrant tomorrow at 9:00 o'clock, 9:30.
THE COURT: That would be a conflict. All right.
MR. CONNELLY: Judge, can counsel approach just briefly?
THE COURT: Yeah.
MR. CONNELLY: All right.
(Whereupon a sidebar discussion commenced at this time)
MR. CONNELLY: I talked to the State and I think she's willing just to give us back (inaudible) situation at the time that the car pulls up behind the suspects. I don't know --
THE COURT: Well, to tell you the truth, I'm ready to make a decision now, quite frankly, unless the State has anything to offer.
MS. WILSON: I was going to offer (inaudible).
HR. CONNELLY: (inaudible) but now the issue is (inaudible) but now the State's saying that

THE COURT: I see the issue is whether there was a -- whether a proper field inquiry was being conducted.
MR. SANDILOS: But the State -- what I'm saying, Judge, is the State told me that they
MS. WILSON: (inaudible).
MR. CONNELLY: They agree that it was a Terry level stop, vehicle stop.
THE COURT: You mean an investigatory stop.
MS. WILSON: Yes.
MR. CONNELLY: Investigatory stop.
THE COURT: Huh?
MS. WILSON: Yes.
THE COURT: You ain't going to win on that, from what I've heard from this officer.
MR. CONNELLY: That's in their Brief.
THE COURT: I understand that. That's what I'm getting at.
MS. WILSON: There's two (inaudible) in my Brief.
THE COURT: I understand. One's a field inquiry and one's a invest -MS.
WILSON: Right.
THE COURT: And there's no field inquiries.
MS. WILSON: I don't know about that but I

(inaudible) a Terry issue.
THE COURT: If it's a Terry issue, then that means that it was an investigative stop.
MS. WILSON: Correct. (inaudible) a Terry issue.
THE COURT: I understand that. I'm ready to hear argument, if you want, but I don't agree. I don't think I agree with you, is what I'm saying, based upon what I heard from this officer. The question is whether you want other testimony on the record to supplement your record or either of you do. I'm not trying to cut you off.
MS. WILSON: (inaudible)
THE COURT: But I'm telling you, without me hearing anything different, from what I've heard from this officer, quite frankly, I don't believe -- and I'm going to put it together in more concise terms.
I don't believe there was a proper fieldinquiry. I think it was more than that. Based upon the case law, it went well beyond a field inquiry. And I think the officer's credible, who I find highly credible, states that fact. Because what he told us was, it was really an investigative stop.
And then when I get to whether it was a valid investigative stop, I can't get there, quite frankly.
And I took that from the Briefs so that's what I was trying to point out to counsel before to narrow it because I saw that as the whole issue here.

Before he even smelled -- whether he can smell the marijuana doesn't matter if you don't – if you can't stop the vehicle.

MR. CONNELLY: I agree.

THE COURT: And I thought I was making that - that's what I needed to hear testimony.

MS. WILSON: (inaudible)

THE COURT: And the officer did a great job. He testified very truthfully, very credibly. The problem is for the case, what he testified to doesn't lead me to the fact that it was a proper investigatory stop, a basis for it.

MR. CONNELLY: I (inaudible) investigator butif the State will stipulate to his report, that's fine. I don't need to call him. That does go to the issue.

THE COURT: Well, the question is, do you want to just do argument tomorrow morning?

MS. WILSON: Well, I'd like to call Detective Farabella, if I could.

THE COURT: Okay. I don't know -- how is it going to help you if it's contradictory to what this officer said?

MS. WILSON: It's not contradictory.

THE COURT: Well, if it's the same thing, I'm telling you there's a problem.

MS. WILSON: Okay. From my point of view, I don't think there's a problem.

THE COURT: Well, I understand that. Well, it sounds like where -- we need testimony. So he can't be here tomorrow morning.

(Whereupon sidebar discussion concluded at this time)

THE COURT: How about tomorrow afternoon at 1:30?

OFC. FARABELLA: Yes, sir.

THE COURT: Are you going to be available then?

MR. CONNELLY: (inaudible).

THE COURT: Well, I don't -- you're talking about putting this off. If you want me to put it off until August, I'll do that.

MR. CONNELLY: No, I (inaudible).

THE COURT: I'm trying to be fair to but I need everybody else to cooperate, too. limited time. We've been April, now we're in talking about July and August.

MR. CONNELLY: I'm not talking about

(inaudible), Judge. I think that it's --
THE COURT: No. It's all of us have to agree. I can't do this alone. I can't do it without her. I can't do it without him. So I can't -- I'm willing to do whatever, although I'm not staying late tonight.
MR. CONNELLY: Here's what I propose. The State said in their Brief (inaudible) stipulated that it was a Terry level seizure --
MR. SANDILOS: 1:30 is fine.
MS. WILSON: (inaudible).
MR. CONNELLY: (inaudible). Just have the -THE COURT: No. You don't understand. That's good for you but she wants to put on more testimony.
MR. CONNELLY: I'm going to object.
THE COURT: I have to let her put the testimony on, especially if I'm probably going to findagainst her.
MR. CONNELLY: (inaudible). Can I make a quick phone call?
THE COURT: And again, I'm trying to move this along. I'm not prejudging it because I'm in the middle of judging it. I am saying that what I heard from this officer, who I found to be very credible and that's the problem here. He testified very credibly and under the law,

I don't think he's met either standard. And I'll go over it tomorrow. I haven't -- you know, based upon the Brief, I think there was a problem, that's why I was trying to push resolution of it. But what we'll do is, 1:30 tomorrow we'll take the testimony of the officer. I'll hear argument. If we need to move it to another -- until Friday to take argument, whatever. I'm going to try to fit it in tomorrow because I don't think it's fair to keep this thing sitting on for another two months and I can't schedule it; okay?
MR. CONNELLY: (inaudible) my 11:00 is a hearing (inaudible).
THE COURT: Yeah. Well, whenever you get here.
MR. CONNELLY: I can make 2:00.
THE COURT: All right. 2:00 o'clock, Officer?
OFC. FARABELLA: Fine.
THE COURT: All right. Very good.
MR. CONNELLY: Thank you, Judge.
THE COURT: Okay.
(Whereupon the hearing concluded for the day at this time, to be continued May 28, 2009 at 2:00 p.m.)

STATE OF NEW JERSEY
CRIMINAL DIVISION
CUMBERLAND COUNTY
IND. NO. 08-11-1055
A.D. _____

STATE OF NEW JERSEY, Plaintiff, vs. CHRISTOPHER SLATER and ROBERT LANE, Defendant(s)	)	TRANSCRIPT OF MOTION TO SUPPRESS

Place: Cumberland County Courthouse
Broad & Fayette Streets
Bridgeton, New Jersey 08302
Date: May 28, 2009

BEFORE:

The **HONORABLE ROBERT P. BECKER, JR., J.S.C.**

TRANSCRIPT ORDERED BY:

CATHRYN WILSON, ASSISTANT PROSECUTOR

APPEARANCES:

CATHRYN WILSON, ASSISTANT PROSECUTOR
Attorney on behalf of the State of New Jersey

LESLIE SNOCK, ASSISTANT PROSECUTOR
Co-Attorney on behalf of the State of New Jersey

CHARLES P. SANDILOS, ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney on behalf of the Defendant Lane

THOMAS CONNELLY, ESQUIRE
Attorney on behalf of the Defendant Slater

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
STATE				
DET. SGT. JODI FARABELLA				
By - Ms. Wilson	6		31	
By - Mr. Sandilos		24		
By - Mr. Connelly		17		32

EXHIBITS	IDENTIFICATION	EVIDENCE
DEFENSE		
D-1 Report of Mr. Cassidy	5	5
D-2S Complaint Against Mr. Lane	28	

DECISION - 53

(Whereupon hearing continued from May 27, 2009, as follows)

THE COURT: Calling the matter of State vs. Christopher Slater under Indictment 08-11-1055 and also Robert Lane under that same Indictment. I don't see

Mr. Connelly here.

MS. WILSON: Here's here.

MR. SANDILOS: He's here, Judge.

THE COURT: Okay. Well, we're ready now. Is he -- he's coming out now? I got you. Okay. Once again, Counsel, your appearances, please.

MS. WILSON: Good afternoon, Your Honor. Cathryn Wilson on behalf of the State.

MS. SNOCK: Good afternoon, Your Honor. I apologize. Leslie Snock on behalf of the State, as well. I apologize. I had a funeral yesterday and I wasn't available. I am second chair in this matter.

THE COURT: Okay.

MR. CONNELLY: Good afternoon, Your Honor. Thomas Connelly on behalf of Christopher Slater.

MR. SANDILOS: Charles Sandilos for Mr. Lane.

THE COURT: Okay. As we left off yesterday, we had released the first officer, Mr. Harold Duffield. And I think the State was going to be calling another witness?

MS. WILSON: Yes, Judge. We have one more witness; Sergeant Jodi Farabella.

THE COURT: All right.

MR. CONNELLY: And Judge, just before we begin testimony, can I -- I've spoken with Prosecutor Wilson

and she's agreed to the admissibility of Delbert Cassidy's report.

I've released him. I don't feel I need to call him. I'd just like to enter that into evidence.

THE COURT: Okay. Is that something you have for me to review?

MR. CONNELLY: It's already with Your Honor. I can provide another copy. Well, I don't know if I ever got a copy of it.

It may have been marked but I don't think I ever got a copy of it. It was not entered into evidence so I would not have looked at it.

MS. WILSON: Right. I mean, I don't think it's evidence, Judge, but I think -- I mean, I don't have an objection to you looking at it.

THE COURT: Well, it sounds like it's going to be now because you're saying -- what are the pertinent parts of ~he report that I'm supposed to take into consideration?

MS. WILSON: I think --

MR. CONNELLY: Judge, the report's offered to show that the parking lot, the Morris View Plaza parking lot is used by local residents for overnight parking.

MS. WILSON: And I think there was testimony from Detective Duffield that that is correct so I don't

object to that being --

THE COURT: Okay. That's really what you want me to take out of that report.

MS. WILSON: -- considered for that purpose.

THE COURT: Okay. Yeah.

MR. CONNELLY: Let the record show I'm showing it to counsel.

MS. WILSON: Yeah, this is what I have. All right.

MR. CONNELLY: May I mark this Defense Exhibit 1?

THE COURT: Very good. Thank you.

MR. CONNELLY: And I'd move to admit it.

MS. WILSON: (inaudible). .

THE COURT: It'll be admitted without

MR. CONNELLY: Thank you, Your Honor. May I

THE COURT: Yes.

MR. CONNELLY: (inaudible) to the Court.

THE COURT: Very good. Thank you.

MR. CONNELLY: Thank you, Your Honor.

THE COURT: You want to mark this as D-l, Monica, when you get a chance?

THE CLERK: Yes.

THE COURT: Okay. Sergeant, how are you doing

today?
OFC. FARABELLA: Very well, sir.
THE COURT: Could you please put your left hand on the Bible and raise your right hand?
DET. SGT. JODI FARABELLA, STATE'S WITNESS, SWORN
THE COURT: Can you tell me your full name?
THE WITNESS: Detective Sergeant Jodi Farabella.
THE COURT: And spell your last name.
THE WITNESS: F-A-R-A-B-E-L-L-A.
THE COURT: Okay. Your witness.
MS. WILSON: Thank you, Judge.
DIRECT EXAMINATION BY MS. WILSON:
Q. Detective Farabella, who is your employer?
A. Millville Police Department.
Q. How long have you been employed by Millville?
A. A little over ten years.
Q. How long have you been a police officer in general?
A. Over ten years.
Q. And what is your present assignment?
A. The Narcotics Division.
Q. How long have you worked in narcotics?
A. In and around narcotics for about seven years.
Q. Now, in your work in narcotics, have you

received any training as far as identifying narcotics or smelling narcotics?
A. Yes, I have.
Q. And what kind of training did you receive?
A. In the regular police academy, they burn marijuana. We smelled raw marijuana. And just through my police training itself.
Q. Now, have you had any training in identifying certain possible CDS?
A. Yes.
Q. Controlled dangerous substances?
A. Yes, I have.
Q. And what kind of training have you had?
A. In narcotics investigation schools, unit school. Just through those kind of schools.
Q. And besides the police academy, have you attended any specialized schools in narcotics?
A. McLaughlin Schools several times.
Q. Have you attended Top Gun?
A. No, I have not.
Q. Okay. Now, as far as working in narcotics, has there ever come a time where you need to do prostitution investigations?
A. Yes.
Q. And how many times over your ten years do believe that you've participated in or conducted your

own prostitution investigation?

A. I would say I was in" probably over ten investigations involving prosecution stings.
Q. Now, are -- in your investigation, in your training doing these investigations, is there certain types of behavior that you would see when a john is trying to solicit a prostitute?
A. Yes.
MR. CONNELLY: I'm going to object. That calls for a narrative.
THE COURT: Well, I don't know if that's wrong in a -- it's not necessarily a reason not to ask a question; because it would call for a narrative. You --
MR. CONNELLY: I'm going to object to it as leading, a leading question.
MS. WILSON: I don't think it's leading, Judge. I think it's --
THE COURT: Overruled. Go ahead.
MS. WILSON: Thank you.
DIRECT EXAMINATION BY MS. WILSON:
Q. Is there ever -- are there certain techniques that a john uses to solicit a prostitute?
A. Yes.
Q. And what are those, in your experience?
A. Some are circling during daylight hours, circling

multiple times. At nighttime, sometimes using a headlight or brake lights. Just mostly circling. They observe them. The prostitute may give a signal back and things like that.
Q. Now, do all these always occur in every single case?
A. Not always.
Q. So is it fair to say there might be some signals that are used in certain cases and not in others?
A. Yes.
Q. Okay. Now, in your training, have you ever and in working in Millville for the past ten years, have you ever encountered a person named Mary Bowen?
A. Yes.
Q. And who do you know Mary Bowen to be?
A. She is one of our prostitutes in. the center in the City of Millville.
Q. Now, have you ever arrested her for Prostitution?
A. Yes, we have.
Q. How many times do you estimate you arrested her or --
A. Without
Q. --have been with people who arrested her?
A. Without looking at her sheet, I'm assuming she's been arrested over ten times.

Q. And that would be for Prostitution?
A. Yes.

MR. CONNELLY: I'm going to object. Calls for speculation.
THE COURT: Overruled.
MS. WILSON: Thank you.
DIRECT EXAMINATION BY MS. WILSON:
Q. Now, I'm going to turn your attention to April 30 of 2008. Do you recall that date? Were you working?
A. Yes.
Q. And specifically, I want to turn your attention towards 11:30 p.m. on that day. And were you working at that time?
A. Yes.
Q. And were you working alone or with other officers?
A. I was with an undercover unit, with two other narcotics officers that day.
Q. Who were you with?
A. Detective Junior Duffield and Detective Joseph Hoydis.
Q. And were you all in the same car?
A. Yes.
Q. Okay. Now, at that time on that date, did you observe Mary Bowen?

Q. And where were you when you observed Mary Bowen?
A. We were --
MR. CONNELLY: Sir, I'm going to object as cumulative. All this evidence that he's prepared to testify to has already been testified to by Detective Duffield and it's cumulative and it's a waste of the Court's time.
THE COURT: Overruled. I want to make sure it's the same testimony.
MS. WILSON: Okay.
DIRECT EXAMINATION BY MS. WILSON:
Q. I'm sorry, Officer. Where were you at the time you saw Mary Bowen?
A. I believe at the time we were on Buck Street. We watched Mary Bowen. We were circling the area. We watched Mary Bowen. She was walking west on Vine Street, I believe, heading towards Columbia.
Q. Now, when you observed this Mary Bowen, were you positive it was Mary Bowen?
A. Yes.
Q. And upon seeing Ms. Bowen, what if anything did you decide to do?
A. We decided to circle and watch her and see where she was going to go.
Q. And what was the Ms. Bowen, what if anything and watch her and see where traffic light at -- like at the time when you saw Mary Bowen?

A. Very light.
Q. And while you were looking -- watching Mary Bowen from your position, how far away were you from

Mary?
A. Very close, at one time passing her. And probably observing her, probably 100 yards away.
Q. Now, while you were watching her, did – what if anything did you observe?
A. I watched -- we watched her go to the corner of Columbia, at which time I seen a black vehicle pass her and hit his back brakes.
Watched that vehicle circle the block, pass heragain and then pulled into the Morris View Plaza parking lot.
Q. Now, you say that this vehicle tapped its brake lights. Did that mean anything to you?
A. Yes
Q. And what did that mean to you?
A. At that time, I believed it was a signal to Mary Bowen possibly having a john.
Q. Now, after the car passed a second time, where did the car go?
A. It went into the Marsh View Plaza parking lot.
Q. Did .it -- did the car keep its engine on?
A. It was parked. I'm not sure if the engine was on.
Q. Okay. Now, at that time that you -- the car pulled into the parking lot, what if anything did you

observe at that time?
A. At that time, we just observed Mary Bowen walking closer to the car. And at the time, we thought it was definitely going -- she was going to approach the vehicle. We moved in. She was probably about maybe 15 yards, 15 feet, somewhat within that range.
Q. That's how close she got to the vehicle?
A. More or less 15 feet, I would say.
Q. And then you pulled into the vehicle. Is that correct?
A. Yes.
Q. And where did you park; do you remember?
A. Directly behind the vehicle.
Q. And who was driving? Were you driving?
A. Junior Duffield was.
Q. Okay. And now, once you pulled behind the vehicle, what if anything did you do?
A. I stepped out of the passenger side. Junior Duffield went to the driver's side. Junior Duffield then made conversation with the driver.
Within seconds, I believe, the bicycle unit pulled in. Junior Duffield indicated to me that he smelled raw marijuana and --
Q. And upon hearing that, what did you do, if anything?

side, just viewing and looking at the passenger.
Q. Now, did the occupants remain in the car at that time?
A. Yes.
Q. And at any time, did they exit the car?

A. Yes. Junior Duffield asked the driver to step out of the motor vehicle, at which time Jason Vinzinski was there. He's on the NCPU Unit on a bicycle.

He asked the passenger side to get out of his --the passenger side, to step out.

Q. And now, what were you doing at this time while Duffield was speaking with Mr. Lane, I believe was the driver?

A. I was more or less positioned near the passenger side, just observing the two officers, what they were doing.

Q. Now, you're observing. Did you observe anything in particular that night?

A. Both individuals here were like kind of huddled together in the vehicle, like crouched over the center console are when they were in the vehicle.

Q. Okay. So -- and then once they exited?

A. Yeah. Once both were exited from the vehicle, there was a clear line of sight. There was, in my reason -- in my experience, I believed it was cocaine in the front console area in plain view.

Q. And where was it? Was it sitting on top

A. On top of the console.

Q. Did you search the car at any time?

A. No. At that time, I just observed what I saw. I told Detective Duffield, I believe there's cocaine on the console.

Q. And at the time you observed what you believed to be cocaine, what if anything was done at that time?

A. At both time, both were under arrest, placed under arrest.

Q. Now, who placed Slater under arrest?

A. That would be Jason Vinzinski.

Q. And you were on that side at the time; correct?

A. Yes, I was.

Q. And was there anything found on Mr. Slater?

A. Yes, there was.

Q. And what was found on Mr. Slater, if you know?

A. It was marijuana was found. Also some cocaine.

MS. WILSON: Okay. Judge, I believe that's all the questions I have for Detective Farabella.

THE COURT: Thank you. Any cross?

MR. CONNELLY: Thank you, Judge.

CROSS-EXAMINATION BY MR. CONNELLY:

Q. Detective, you mentioned you were on the passenger side of the vehicle and that Detective

Duffield was on the driver's side. Where was Hoydis?
A. Hoydis was with the -- Mary Bowen, the prostitute.
Q. Okay. She was still, at that point how many feet away from the car? I think you said ten, fifteen?
A. Fifteen feet, I would say, give or take. Somewhere in that.
Q. In what position was she, relative to you and Detective Duffield? Was she behind you, behind your back, towards the rear of the car?
A. At that time she was taken to, I believe, near the corner away from the scene, probably 100 feet away from the scene.
Q. Okay. But you said earlier that Vinzinski arrived before you pulled the suspects out of the vehicle. Is that right?
A. Yes.
Q. Okay. And when you approached the vehicle, do you remember, did you have your badge?
A. Yes.
Q. And was it visible?
A. Yes.
Q. And you had your firearm?
A. Yes.
Q. And when you approached the vehicle, did you have your hand on the firearm?
A. No.
Q. Okay. Was it unfastened in your holster?

A. There's no fastening. It's just the way it's observed today.
Q. Okay. But the -- and do you mind standing up so I can see?
A. Okay.
Q. And were you wearing a jacket?
A. Yes.
Q. Okay. And was the weapon visible?
A. Yes.
Q. I think you said earlier that you actually circled the block?
A. Yes.
Q. And then (inaudible) to observe Mary Bowen?
A. Just to watch Mary Bowen.
Q. Now, if somebody had been watching you circle around Mary Bowen, could they have suspected you of --
MS. WILSON: Objection.
MR. SANDILOS: -- soliciting prostitution.
MS. WILSON: Speculation, Judge.
MR. CONNELLY: She's asked speculative questions all afternoon of this officer.
THE COURT: I didn't hear the speculative they weren't -- to me they weren't speculative. They were factual about what he saw. Your question is ask it again, just to make sure I'm getting your proper gist.
MR. CONNELLY: Let me break it down into

couple of different questions, if I may.
CROSS-EXAMINATION BY MR. CONNELLY:
Q. Detective, you said earlier today that you circled around Mary Bowen and parked to observe her. Is that right?
A. Yes.
Q. You were in an unmarked vehicle. Is that right?
A. Correct.
Q. Let's say there had been another set of officers watching you circle Mary Bowen. Would that have been suspicious activity, what you did in your vehicle, circling --.
A. Probably not because the whole department knows what vehicle I drive.
Q . Okay. But let's say they didn't. Let's say they were, you know, Federal police.
A. But I didn't go by Mary Bowen and tap my brakes.
Q. Okay. So your position is at the time that you were there at the stop, basically the only thing that differentiates a -- the suspects as -- in terms of potential johns from any innocent person on the street, is the fact that they tap their brake light? Is that right?
A. I don't understand your question.
Q. Well, you were --
A. During my investigations doing this --

Q. -- weren't looking for a prostitute; right? Were you?
A. I'm sorry?
Q. You weren't looking for a prostitute that night. The three of you in the car, were you johns?
A. To be honest with you, when I come to work I'm looking for anything and everything.
Q. No. I mean --
A. I don't know what I'm looking for.
Q. - were you looking to hire a prostitute that night?
THE COURT: Listen, you're becoming argumentative, sir. I think he's answered the question.
MR. CONNELLY: I'm sorry, Your Honor.
THE COURT: Okay.
MR. CONNELLY: Let me finish with this line. Were you there to hire a prostitute that night?
MR. CONNELLY: Sir, you're being argumentative.
MR. CONNELLY: I'll rephrase.
CROSS-EXAMINATION BY MR. CONNELLY:
Q. You testified earlier that you circled around Mary Bowen. You also testified earlier that one of the facts that you consider in identifying potential Johns, the Defendants, was that they circled Mary Bowen (inaudible).

The activity you also did, an innocent person. My suggestion is and my question is, the only thing that indicated to you that these guys were looking for a prostitute was the fact that they tapped their brake light? Is that correct?

A. And circling twice.

Q. Okay. So they circled one more time than you did and tapped their brake?

A. Correct.

Q. And that's it; right?

A. That's all I needed to see or observe.

Q. Okay. And you just testified that Vinzinski stopped Mary Bowen. Is that correct?

A. No.

Q. Who stopped Mary Bowden? Hoydis. Hoydis stopped Mary Bowen?

A. Correct.

Q. All right. So she's there obviously. And you claim you saw a transaction for sex about to occur or in the process of occurring. Is that right?

A. Possibly it was going to occur.

Q. Because according to you, the communication to her was the brake lights and then she's approaching the vehicle; right?

A. Affirmative. Correct.

Q. All right. So if you're looking to bust a prostitute for potential johns, why didn't you let that

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transaction actually happen?

THE COURT: Sir, I -- let -- you have to stand near the microphone. Our -- we're just -- we're not going to pick this up. Because we've been listening to some tapes lately and unless -- when you walk away from the table, it doesn't pick it up.

MR. CONNELLY: You had mentioned that, Judge. I know. I'm sorry.

THE COURT: Yeah, it just doesn't pick it up.

CROSS-EXAMINATION BY MR. CONNELLY:

Q. So what -- you didn't arrest them for Prostitution or Solicitation; did you?

A. To answer your question, once those two connect, it might change the investigation. It might tell that officer that I'm a friend and then I'd want to have them separated.

That's what I wanted. I want to see if I can, through my investigation, show that he is soliciting a prostitute. If not Prostitution itself, I've got him Loitering for Prostitution in. that area, in a Weed and Seed area.

Q. Well, you agree you'd be better off getting him on Prostitution, actual Solicitation; right? I mean, that's --

A. I can't answer that. What -- you're telling me what's better?

Q. Well, so what you're saying is you would I don't understand your answer. Why didn't you arrest Mary Bowen for Prostitution?
A. The deal didn't go down.
Q. It didn't go down because you interrupted it. So my question is, why did you interrupt it? Why not let it go down? You're investigating prostitution.
A. You're saying I'm investigating prostitution. I'm investigating anything or anything at that time. I believed that was -- could have been a prostitution deal.
Q. All right.
A. Mary Bowen is the target that we looked at. Mary Bowen is the target of numerous criminal activity.
Q. Okay. Then let me get this clear. The reason you stopped Defendants in their vehicle was because you suspected --
A. Correct.
Q. -- them of Soliciting Prostitution.
A. Correct.
Q. Is that right?
A. Correct, at that moment.
MR. CONNELLY: I have no further questions. Thank you.
CROSS-EXAMINATION BY MR. SANDILOS:
Q. Detective, very briefly; when you saw the car hit its brake lights, you then -- you saw the car then

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go into the parking lot. Is that correct?
A. I believe it circled maybe one more time and then went into the parking lot.
Q. And when it went into the parking lot, you followed it in. Is that right?
A. That's correct.
Q. And when I say you, I mean the three of you in the police car.
A. That's correct.
Q. And when you parked, you parked behind the vehicle that Mr. Lane and Mr. Slater were in. Is that right?
A. That's correct.
Q. Now, the amount of space that – and Detective Duffield was driving at that point. Is that right?
A. That's correct.
Q. When he parked the car behind Mr. Slater and Mr. Lane, he parked it in a way that it was fairly close to Mr. Lane's vehicle. Is that correct?
A. I know he pulled in behind him. I don't know the feet. You know, it was fairly close.
Q. Okay. And it was close enough where Mr. Lane was not going to be able to back out or -- and leave. Is that right?
A. That's correct.
Q. In fact, the three of you got out of your

vehicle and Detective Duffield approached the driver's side and you were on the passenger side. Is that correct?
A. That's correct.
Q. And I think you said Detective Hoydis was also there and he was near you, as well?
A. Yeah. He went right to Mary Bowen.
Q. Okay. And then an Officer Vinzinski showed up. Is that correct?
A. That's correct.
Q. Now, Detective Duffield was there communicating or talking with the driver. Is that right?
A. That's correct.
Q. Were you able to hear any of the conversation between Detective -- I'm sorry -- Detective Duffield and the driver?
A. I didn't hear much of the conversation.
Q. Okay. Were you able to hear anything about Mr. Lane explaining how he dropped his telephone?
A. I did not hear that.
Q. Okay. Did you hear anything else, any other communication between Detective Duffield and Mr. Lane?
A. I did not.
Q. When we had asked a series of questions with concerning with Detective Duffield about his noticing Ms. Bowen. You noticed her, as well?

A. Yes.
Q. You didn't write a report, though, in this matter; did you?
A. No, I did not.
Q. Would it be fair to say that then when you when Detective Duffield pulled the car in between her -- in back of Mr. Lane's vehicle, that Mr. Lane was not free to leave. Is that correct?
A. At that point, he was not free to leave.
Q. So he was in some type of a detention at that point. Is that correct?
A. That's correct.
Q. Now, did you review Detective Duffield's report today?
A. Yes.
Q. Okay. And you chose not to write a report in this matter. Is that right?
A. What I observed was told to Junior Duffield at the time. I review his reports and it was factual of what I told him. I was --
Q. But you didn't write a report, as well. Is that right?
A. No, I did not.
Q. Okay. .So what he put into his report was concerning a conference that he had with you and possibly Detective Hoydis. Is that correct?

A. With me. I couldn't say Detective Hoydis.

Q. In the course of your investigation, you know or you learned that Mr. Lane lives in the 500 block of Columbia. Is that correct?
A. When did I know that he lived lives -- I'm sorry?
Q. Well, did you learn that?
A. I found out.
Q. During the course of your investigation.
A. Yeah. I found out later he -- where he used to live, yes.
Q. Okay. And I believe the address that he lived at was 517 Columbia. Is that correct?
A. I'm not sure of the address.
Q. Okay. If I show you the Complaint in the matter, would that refresh your recollection as to his address?
A. Yes.
Q. Okay. And I'm talking about specifically on April 30 of 2008.
A. Yes.
Q. Okay. I'll show you what's marked as D-2S. That's a Complaint charging Mr. Lane with various offenses. Is that correct?
A. Yes, it is.
Q. Okay. And looking at that Complaint, does that refresh your recollection as to Mr. Lane's address on April 30 of 2008?

A. When he was arrested, yes, that's the address he gave.
Q. Okay. And it was placed in there, as to what his address was. Is that correct?
A. Yes. It's right here.
Q. In the caption. All right. So Mr. Lane's address was 517 Columbia Avenue. Is that right?
A. That's the information he gave to the processing officer of that address. Correct.
Q. When Detective Duffield approached the driver's side of the vehicle, he had asked -- or did you hear him ask the -- Mr. Lane to roll his window down?
A. I don't recall.
Q. Okay. Did you ever hear him -- did he make any motions for Mr. Lane to roll his window down?
A. I don't recall.
Q. Did you -- do you recall whether or not Detective Duffield asked Mr. Lane for his name?
A. It doesn't ring -- I mean, I'm sure that's the first thing he's going to ask but I didn't hear it because I was on the other side of the vehicle.
Q. All right. Do you remember Detective Duffield -- strike that. Did you -- I know you were in plain clothes that night. Is that correct?
A. That's correct.

26 Q. And Mr. Connelly's already asked you about.

where your badges were and whether or not you were carrying a -- your service weapon. Is that correct?
A. That's correct.
Q. But you also radios. Is that right?
A. That's correct.
Q. Where -- and where were the radios?
A. It would be either in the car or in our back pocket. Usually, it's with us.
Q. Do you recall Detective Duffield calling in for a warrant check on Mr. Lane?
A. I don't recall. I don't remember. It's a year ago. I'm -- it's standard process. It's what we do.
Q. It would be something that you think would have happened?
A. He might have. I mean, he was probably doing -- you know, he was doing his investigative stop. He's probably doing an interview, asking him what he was doing and things like that.
Q. Did you call in for a warrant check on Mr. Lane or Mr. Slater?
A. I don't recall if I did or not.
Q. Okay. Did you instruct Detective Duffield to do that?
A. As the Sergeant, I usually do.
Q. Okay. But you can't remember specifically. Is that right?
A. I cannot.

MR. SANDILOS: Judge, I have nothing further. Thank you.
THE COURT: Thank you. Any redirect?
MS. WILSON: Judge, I have one question.
REDIRECT EXAMINATION BY MS. WILSON:
Q. If I say preventative policing to you, Detective Farabella, do you understand what that term means?
A. Yes.
Q. And what does that mean to you?
A. It's proactive.
MR. SANDILOS: Judge, I'm going to object as to relevance.
MS. WILSON: It's completely relevant, Judge, because Mr. Connelly spent a lot of time on why they would have stopped before Ms. Bowen got to the car.
THE COURT: I'll allow the question.
THE WITNESS: Yes, it's proactive policing. I don't know if Junior Duffield explained it. We're in a Weed and Seed area. We go to town meeting centers, east, west. They're very the commissioners, we attend these meetings. They want us to be more proactive. Mary Bowen is a -- she's been arrested many times for Prostitution. We're just trying to be more proactive in the situation and this is what revealed.

MS. WILSON: Thank you. Judge, I have nothing further

THE COURT: Anything redirect? I mean recross. Excuse me.

MR. CONNELLY: Yes.

RECROSS-EXAMINATION BY MR. CONNELLY:

Q. So you're trying to protect her? Is that your testimony today?

A. No. I didn't say I was trying to protect her.

Q. Well, what's proactive about what you did?

A. Trying to eliminate prostitution in the City of Millville.

Q. But if you take a prostitute --

A. Trying to deter johns from picking up Mary Bowen.

Q. Okay. If you take a prostitute off the street by arresting her, doesn't that solve the problem?

A. She's been arrested multiple times.

Q. Okay. But if you took her off the street again and put her in jail, she wouldn't be on the street; would she?

A. That's not for me to decide.

Q. Well, you just said it. You said your --

A. She's been arrested multiple times for Prostitution. I can't --

Q. Let me just --

A. keep her in jail for that.

Q. Let me stop you there. I had a very specific

question. You just told me a few seconds ago on my question about being proactive that you are out there to prevent prostitution. Is that right? You just said that.

A. Preventing crime.

Q. Okay. Okay. And you also said that Mary Bowen is a known prostitute.

A. She is.

Q. Isn't that right?

A. She is.

Q. Okay. You agree with those statements?

A. She's a known prostitute. Correct.

Q. And if you lock up a known prostitute and they're in jail, she's not able to go and solicit johns; is she?

A. In theory.

Q. Well, in practice too; right?

THE COURT: What's your point? What are you getting to that's going to help the Motion?

MR. CONNELLY: Well, I am on recross, based on her redirect about proactive policing.

THE COURT: I know what you're doing but what are you trying to prove that I'm already not seeing by the -- asking it the first four times?

MR. CONNELLY: Well, I'm not asking the same question. I'm trying to lead him to the conclusion I

am about to do.

THE COURT: All right. Ask him if -- ask him that conclusion then and see if he agrees with it.

MR. CONNELLY: Okay.

RECROSS-EXAMINATION BY MR. CONNELLY:

Q. So would it have been proactive policing to arrest Mary Bowen?

A. At that time, I couldn't arrest Mary Bowen. She did not commit the act.

Q. So you didn't have enough information to arrest Mary Bowen?

A. Not Mary Bowen at the time but I could have arrested Mr. Slater or Mr. Lane for

Q. Oh, really? Explain that, please. For what?

A. For Soliciting for Prostitution. .

Q. Because they tapped the brake light?

A. Through our interview.

Q. Well, if they're guilty of Soliciting Prostitution, isn't the. prostitute guilty of the same thing? I mean, she's there. She's

A. We--

Q. If it -- isn't she guilty of Prostitution.

A. I'll make this a little easier, I think. We've arrested Mary Bowen multiple times but we do operations just specifically for females, if you understand. We may have a male policeman --

Q. So you went easy on her because she's female?

A. -- just solicit her. I'm sorry?

Q. You went easy on her because she's female?

A. No. You're not -- you're missing the point.

Q. I'm getting very confused here. Because you're telling me that you had enough information to arrest these gentlemen based on things that she's doing and they're doing, in combination. And yet youlre telling me in the same breath that you don't have enough information at that time to arrest Mary Bowen for Prostitution. That doesn't make any sense to me.

MS. WILSON: Judge, I think at this point Mr. Connelly is just arguing with the witness.

THE COURT: Well, he's doing it by asking questions this time, at least, but I find it to be argumentative and I wish you'd get off this line. It's not really going anywhere. You've tried it six, seven times now.

MR. CONNELLY: It's because I can't get a straight answer.

THE COURT: I think he's given you the answer. You just don't like it.

MR. CONNELLY: No, they just don't make sense.

THE COURT: Well, that's for me to make a determination but that can be your argument. That's not a -- that's -- again, that --

MR. CONNELLY: I understand.

THE COURT: -- is argument. That's not the

time for argument for that, though.
MR. CONNELLY: Judge, your point's well taken.
THE COURT: Okay.
MR. CONNELLY: I have no further questions.
THE COURT: Anything else with this witness?
MS. WILSON: No, Judge.
THE COURT: Officer, you are excused.
THE WITNESS: Thank you, sir.
THE COURT: Any other witnesses, from the
MS. WILSON: No, Judge.
THE COURT: Okay. State rests. Anything to enter into evidence?
MS. WILSON: No, I don't believe so.
THE COURT: Okay. You have -- do either of you have witnesses?
MR. CONNELLY: No, Judge.
MR. SANDILOS: I do not, Your Honor.
THE COURT: Okay . So we're ready for argument?
MR. CONNELLY: Yes.
MR. SANDILOS: Yes.
THE COURT: Okay. I'm going to give you a minute to think about that, about your arguments. I'm going to -- I've got a search warrant to handle. It shouldn't take me too long. I'll be right back; okay? Can you leave him here okay or do you –

whatever you've got to -- I won't be too long. I won't be too long. All right.
(Whereupon off the record for a brief recess at this time and then return to the record as follows)
THE COURT: Okay. Counsel, I'll hear you as to argument.
MS. WILSON: I'm going to go first. Judge, in this case, this was a valid investigatory stop or a Terry stop.
Now, we're not arguing from the State's point of view that this was just a mere field inquiry. This is an investigatory stop and I don't think there's any question that it was an investigatory stop.
It wasn't a motor vehicle stop because the car was actually already stopped. This was an investigatory, the same as walking up to two individuals on the street.
And in order to have a valid investigatory stop, you need two things. First, you need reasonable suspicion.
And the second prong of a valid investigatory stop is, the scope must be reasonably related to the justification for the initial interference.
Now, reasonable suspicion is based on an objective standard, based on what the officers at the time knew, based on their training and experience.
Which, taken together with rational

inferences from the facts they knew at the time, warrant some sort of intrusion on an individual's privacy rights and right to leave.

Now, here what we have is Detective Duffield and Detective Sergeant Farabella, who together have 22 years of law enforcement experience. They were working all together in a van, watching Mary Bowen.

Who they both testified that they knew from previous prostitution investigations, as well as personally arresting her for prostitution on numerous occasions.

They both testified that there was no doubt in their mind this was Mary Bowen. This is 11:30 p.m. at night, in a Weed and Seed district. .

Which they testified -- Detective Duffield provided the Court as to what a Weed and Seed district is and what the significance of that is.

Now, when they see Mary Bowen, they both know who she is. They see the Defendant's car drive by, tape its brake lights, drive past Mary Bowen slowly. Circle the block, once again drive past Mary Bowen slowly.

And pull into a neighboring parking lot and stop the car. Now, they then see Mary Bowen walk towards the car and they let her get within ten to fifteen feet of their vehicle -- the Defendant's vehicle.

And that's when they decide they're going to investigate this further. They pull in behind the Defendant's car and initiate this investigative stop or Terry stop.

Now, taken alone, these facts might be innocuous, they might be innocent and that might be the case. And that might be the case for the Court, myself or defense counsel. That we would think all these things are just innocent acts.

But however, given Detective Duffield and Sergeant Farabella's vast experience in this area of prostitution, as well as their investigations that they said they did in prostitution.

As well as knowing Mary Bowen, the time of night, the district they were in and the Defendants tapping their brake lights. All together, they made a rational inference that something was going down.

They inferred from what they saw and the –Mary Bowen was involved. That these individuals, that being the Defendants, were trying to initiate Mary Bowen for some sort of sex act. That's what they believed as trained officers and that's what the Court needs to look at.

Now, this might have been a completely different situation if Mary Bowen wasn't in the equation. If this

was just a normal female on the street and this same activity occurred, we might have a

different situation here.

Now, we also might have a different situation if these weren't the officers involved. Now, say myself and defense counsel were sitting in the car, looking at the same situation.

Now, we might just see a lady on a corner and a guy looking for a parking spot. But that's not what these officers see. That's not the rational inferences they drew from this situation.

Now, they also don't need to wait until an actual sex act occurs to stop, once they have reasonable suspicion, which they did here.

Now, once they believed they had reasonable suspicion, they approached the car and made an investigatory stop.

Now, the scope of this was fairly brief. They stopped initially to speak with the driver. Detective Duffield testified that he spoke to the driver for under five minutes when he noticed the smell of marijuana.

That's when it escalated into a probable cause to let -- to arrest at that time. They· asked them out of the car and that's when Sergeant Farabella observed in plain view the cocaine on the center console.

Which led to the arrest of the Defendants and the ultimate search incident to the arrest of the

Defendants, which led to the result recovery of marijuana, more cocaine, as well as cash on their persons.

Now, this whole transaction, Detective Duffield testified, from the sight of Mary Bowen to the end of this when they were arrested, lasted ten minutes at the most. That's what he testified to yesterday.

Now, this was a quickly escalating investigatory stop that resulted in the arrests. Now, but for the smell of marijuana, they probably would have drived [sic] away.

Now, we're speculating at that point but I don't see anything from their testimony that indicated they would have been held, but for them smelling marijuana within that less than five minute time frame.

So Judge, the State's point of view is, this was a valid investigatory stop. While we might think these acts are all innocent, what we need to look at and what the Court needs to look at is whether these officers believed it was reasonable to stop that vehicle at that time.

And I believe, Judge, there's significant facts on the record that there was a reason to stop this car and investigate further. And the drugs should not be suppressed and neither should the money. Thank you, Judge.

24 THE COURT: Thank

MR. CONNELLY: Thank you, Judge. I'll be very brief. Now, on one point I think the State and I disagree -- or agree and that is that this stop was at least a Terry level seizure of the Defendants, at least.

I would argue, Judge, that it was beyond that. When you have three armed police officers surrounding a vehicle and accosting another alleged perpetrator of crime.

You have a police vehicle boxing in the subject vehicle with no way out. You have an arrest. That's -- I don't know what else to call it. They had everything but the handcuffs on them at that point. They weren't going anywhere.

Anyway, as I said, I believe it was a full seizure and they -- but the real point in this case is, the police didn't have justification to interfere with Defendant's privacy rights and their rights to be left alone at any point and at any level. They had no right to accost these Defendants.

And I -- and the reason is, I'll just refer Your Honor to Detective Duffield's testimony at page 34 and 35. I asked Detective Duffield on cross-examination --.

MS. WILSON: He doesn't have a copy of that.

MR. CONNELLY: Oh, you don't have a copy? Well, I'll just quote it, if I may, for the record.

The question was by me to Detective Duffield; "Is it fair to say the only indication that you had that there was some sort of prostitution transaction going on" --and there's a typo.

"Was that the -- that some brake lights were flashed and the subject vehicle pulled into a parking spot?" Answer by Detective Duffield; "That would be fair to say." And there's some additional but that sums it up for you, Judge.

The evidence that they had, even with their experience and training as police officers, was nothing. They had no level of suspicion that would justify any interference with these Defendant's rights, period, end of story.

The report that Your Honor has by Mr. Cassidy details that the Morris View parking lot is used by residents in the area to park overnight.

Detective Duffield testified he thought there were other vehicles in that parking lot, presumably from private individuals at that time on the scene, He couldn't quite recall.

We find out, and it wasn't in the officer's head at the time but we find out that in fact, Defendant Lane lives only blocks away. And again, you heard Detective

Sergeant Farabella's testimony that they circled Mary Bowen once before they parked to surveil her.

My point there was that basically, the only facts the State can point to that suggest that anything illegal is going on, is that the block was circled, that the vehicle was parked and that some brake lights flashed.

I haven't heard anything that would indicate to me or I think to the Court, how flashing of the brake lights in pursuit of a prostitute is any different from applying the brakes to slow the car down for any reason.

For example, to negotiate a curve if you're circling a block and then to park. I do it every day in Philadelphia.

Detective Duffield also testified that he has seen or has experience where private individuals, clearly not johns, not attempting to solicit prostitutes, will put into a parking spot in a high prostitution area.

And they'll be solicited by a prostitute. They'll be approached. It's not evidence but (inaudible) argument but Mr. Cassidy had that actually happen to him in Millville.

Somebody jumped into his car. He said; "Who are you?" It turns out she was a prostitute. He asked one of the residents if she knew her.

But the real point here, Judge, is you've heard the testimony today, is that they were

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investigating -- and by Detective Duffield previously.

The testimony is, they were investigating a suspected transaction for sex. The strongest evidence that that's -- that it was that civil pretext and it was not the real reason that they were -- my client was stopped and Mr. Lane was stopped.

Is that they never arrested Mary Bowen for Prostitution. Even if they were proactively policing or whatever they call it, you heard Detective Sergeant Farabella say well, the best way to prevent prostitution is to take the prostitutes off the street.

Or something to that affect. If they had left her -- let her approach the car, maybe seen some money change hands, her get into the car or them go off to an area where it was more private, they would have had their case.

They could have arrested all three of these individuals for Prostitution and put them in jail and then there's another prostitute off the street. Two more johns off the street. But they didn't do that.

They wanted a reason to take down these Defendants. They had no idea there was -- there were drugs in the car. They didn't have a valid reason to stop them. They wanted to find it.

And they come up with these flashing brake lights and circling post-arrest to justify their actions. Which were, in my opinion, entirely illegal.

Thank you, Judge.

THE COURT: Thank you.

MR. SANDILOS: Your Honor, we know that the issues here are basically what actions did the police engage in?

And we also know from reading the case law out there and especially in State vs. Davis, that we can go from a field inquiry to an investigatory stop to an arrest. And it can happen fairly quickly.

We also know that, from State vs. Davis and also Florida vs. Royer, that engaging in a field inquiry, that the police officer can stop a citizen on the street and ask them what their name is.

And ask them where they live and ask them about their business. But we also know that the person can refuse to speak and we know -- or can refuse to answer those questions.

And we also know from those questions that the person not only can refuse to answer those questions but is supposed to be given a way out, so that they are not confined.

So that they are free to leave whenever they so choose. The reason that you have the field inquiry is so the police can -- the police officer can go up to the person and ask them a question.

Going into what the Prosecutor claims happened was that this, there 'was no field inquiry.

That this was really an investigatory detention.

Means that there has to be some kind of reasonable and articulable suspicion that there was some criminal activity afoot.

The problem is that when you listen to Det. Duffield's testimony, you don't have that. And his testimony -- and I think he was a credible witness. He answered our questions. He wasn't argumentative with us.

And I think he was pretty well forthright in answering the Court's questions, as well. The Detective tells us that he notices this person named Mary Bowen, who's known to be a prostitute, walking down the street.

Now, he also tells us that she's not somebody that he knows -- or that it's not -- as she's walking down the street, she's not doing anything that would arouse his suspicion, except for the fact that she's Mary Bowen.

The second thing is, she's not dressed provocatively or walking in a way to attract business, so to speak. She is also not engaging in any other activity that would arouse his suspicions, such as bend-- you know, looking for cars.

Or standing on the corner for anyone time or anything like that. He also then says that he claims that Mr. Lane was driving by and that he flashed his

brake light.

And then pulled into -- went around the block, pulled into the parking lot. He asked Mr. when he approached -- eventually, when he approaches Mr. Lane, as to why he was doing that.

Mr. Lane tells he him was -- I dropped my cell phone and I pulled into the parking lot to look for it, to pick it up.

Now, that's a fairly credible reason as to why he pulls into the -- and I'd say it's a very credible reason as to why he pulls into the parking lot. It's also a very credible reason, as to why he steps on the brake light.

I had asked, I think during the cross-examination and you're the fact finder and your recollection governs. But I'll suggest to the Court that when I asked Detective Duffield several questions concerning if he ever dropped a cell phone in the car.

Candidly, I have. I dropped a cell phone in the car. One of the first things I do is try to hit the brake while I'm reaching down to get the phone.

But the safe thing to do is to -- as you're hitting the brake, is to notice -- is to go back into an area that's out of -- that's off the street so that you can look for your cell phone and try to pick it up.

Now, the Prosecutor said something interesting in her summation to you today and that's

that the police pulled up behind Mr. Lane's vehicle to ask some questions.

Well, that Your Honor, to me, is a field inquiry. But what don't the police do? When the police pull in to make this field inquiry, unlike what is told that they don't allow Mr. Lane an out.

You've heard from both Detective Farabella and Detective Duffield what happens. They pull in. They don't leave him an area where he can just pull back, he can go into reverse and leave.

I'm not saying make a quick escape. I'm saying, you know, do so. I'm not going to talk to you and I'm not going to leave now. What they do is, they pull in so that he can't go anywhere.

In fact, Detective Duffield I think said well, I guess he could have gone but he would have had to do have gone over the embankment and over the curb and into the street, which really is no way to leave.

So there was no way for him to go. As soon as they pulled behind him, not leaving him any room to be able to leave, there's basically an officer on the passenger side and an officer on the driver's side.

The officer on the driver's side, Detective Duffield, obviously wants to talk to Mr. Lane. Asking him what are

you doing here and that's when Mr. Lane explains. Gives him the perfectly logical explanation;

I pulled in to look for my cell phone.

So what you had was, in actuality, no matter what the Prosecutor wants to call it, but how the Prosecutor describes it and how the detectives describe it, is not an investigatory detention or stop.

You have a field inquiry because they want to ask him questions. There's also other things. The-Ms. Bowen is farther away from the car. She's about 15 feet from the car. There's nothing else.

There's no exchange of money. There's nothing that goes on to arouse any type of a reasonable articulable suspicion that there is any criminal activity going on.

Had they done this properly, what would have happened was that they would have given Mr. Lane some time to be able to have left or made him feel that he was not surrounded. And made him feel that he was not -- that he was free to go.

When you look -- you know, and obviously the Court should take into account the fact that, you know, both the detectives had their badges there. They had their service weapons there.

And obviously, these two gentlemen were not free to leave. So no matter how the State wants to say that there was this reasonable articulable suspicion, there wasn't.

The officers didn't know what they – what

was going on. They obviously wanted to go and talk to Mr. Lane but they did so in a way that was intrusive and was in a way that violated the Fourth Amendment to the Constitution and the Constitution of the State of New Jersey.

And for that reason, Your Honor, this Court really is required to suppress all of the evidence that was seized as a result of this case. Not only from that particular stop there, from what the State claims to have been in plain view.

But later on, as the fruit of the poisonous tree, to get them down to the police station when they finally look through everything and find the remainder of the evidence that's in this matter.

So I would -- I urge the Court that all of the -- that the State hasn't been able to prove that it fell within arty of the exceptions to the search warrant. That the search was illegal and that, therefore, this Motion has to be granted.

THE COURT: Thank you. Well, as you know, this matter comes to the Court on -- before the Court on Defendant Christopher Slater's and Defendant Robert Lane's Motion to Suppress Evidence, as seized by law enforcement in this matter.

Defendants argue that the police conduct constituted an improper investigatory stop and the

evidence should be suppressed.

The State counters that the initial conduct was a field inquiry and they state that in their Brief, but that changed during the course of the three days we were here.

Or in the alternate -- alternative, that a valid investigatory stop was found. And again, I find that based upon the matter being -- having read the Briefs, as submitted by both counsel and the State.

And this matter was presented to the Court by hearing testimony on April 8, May 27 and May 28. And then hearing argument here today on May 28.

The Court now, considering the parties arguments, issues its opinion in making its decision and grants Defendant's Motion to Suppress the evidence.

Now, before I go to the factual, I make the observation, just so you know where I'm going. This is a case, quite frankly, where the officers had, I think from the facts as I'm going to go over, the ability to conduct a proper investigatory -- or a field inquiry.

Strike that. Had the ability to, under the facts, conduct a field inquiry. But they in fact conducted an investigatory stop.

And that's the -- is the -- what I'm going to show from the facts and the testimony and the representations of counsel.

Quite frankly, I don't think they waited long enough to determine that they had enough facts for an

investigatory stop. But quite frankly, they did have enough to do a field inquiry but went beyond that right from the get-go.

And why I find that is as follows. And I tell you, I take it from the testimony that I heard, the Briefs, the reports' and the arguments submitted in relation to the matter.

States on a Wednesday, April 30, 2008 at approximately 11:34 p.m., Detective Harold Duffield, Sergeant Jodi Farabella and Detective Joseph Hoydis were conducting undercover surveillance in the area of Columbia Avenue and Vine Street in Millville, New Jersey.

The officers were allegedly watching Mary Brown [sic], who was a known prostitute, and I find that. And attempted to solicit sex from a number of individuals.

I heard testimony from two officers in this matter, Officer Duffield and Officer or Sergeant Farabella, both being detectives. I found them both to be extremely credible.

Their testimony was consistent. I found nothing with their testimony that would lead me to believe that anything was amiss. They told me and I believe them, exactly what occurred.

So I find nothing amiss with that testimony and I think it matches, for the most part, the facts as

presented by both counsel for the defense and for the most part, by the factors presented by the State in their Brief.

So there's really no contention here factually, that I can see. The officers all believed that Mary Bowen, hereafter Bowen, was a prostitute, based on her prior police record, which includes two prior indictable convictions for Engaging in Prostitution.

The officers testified that they allegedly observed a black vehicle approach the area where Bowen was located.

They also -- the officers also testified that they observed the vehicle slow down as it neared Bowen, flash its brake lights as it passed by.

Circle the block, pass Bowen a second time and pull into a nearby parking lot. The officers believed such behavior was consistent with persons attempting to solicit prostitutes.

And I find that the -- really, the fact that they circled and the brake lights are the two issues, which nobody's disputing happened. It's just a question of how it was supposed to be read.

When the vehicle pulled into the parking lot, Bowen allegedly began walking toward the black vehicle. At that -- it was at this time that the officers moved in and pulled their vehicle, an unmarked car, behind

the black vehicle.

The officer approached the vehicle to allegedly speak to the vehicle's occupants. Bowen allegedly left the area when she noticed the officers approaching the vehicle.

It's important to note that Bowen never got closer than approximately 15 feet of the vehicle. So the officers were never sure that she was actually going to the vehicle.

It looked like she was but it was their assumption that she was. And that's what led to probably a valid field inquiry, if they were going to do one.

But they certainly, I don't think, waited long enough at that point to determine factually that there was actually Solicitation of Prostitution going to occur.

Which would have led it maybe to a valid investigatory stop, which in fact was held. Detective Duffield testified, as Detective Farabella testified, that they approached.

Detective Duffield approached from the driver's side vehicle and spoke with the vehicle's operator. And I'm going to rely on Detective Duffield's testimony here because he's the one that said he smelled marijuana in the vehicle.

He spoke with the vehicle's operator,

Defendant -Robert Lane. Sergeant Farabella and the other officer approached the front side of the vehicle, passenger side of the vehicle, occupied by the Defendant Christopher Slater.

As Defendant [sic] Duffield spoke with Lane, he allegedly could smell strong odor of marijuana emanating from the vehicle and I find that he did. In fact, during that five minute period, he was very clear.

It wasn't just a minute. It wasn't just two minutes. It was three to five minutes, closer to five, based upon the testimony. Which was more than, quite frankly, a field inquiry.

It went -- this went on for a while, discussions went on for a while. It's important to note that the vehicle was -- they blocked the vehicle in. It couldn't pull forward, couldn't pull backwards.

He then asked Lane to step out of the vehicle and went on from there. And I'm not going to go on past that because what it really is and I tried to say it at the beginning of this.

The time period is what constituted the stop and what type of stop was it. And I think factually, that's what makes the distinction here with the law, which I'm going to go over in a second.

Again, once the two exited the vehicle, Jodi -- Sergeant Farabella observed two plastic bags

containing white rock and powdered substance he suspected to be cocaine.

I find that was legally observed, if they had been there legitimately in the first place. But they had not legitimate purpose to tell them to get out of the vehicle, so that has to be suppressed.

These vehicles were in plain view but the question is, the stop as making it legal from there. And then obviously, the rest of the evidence was collected thereafter, subsequent to the arrest.

Both Slater and Lane contend that the controlled dangerous substances seized from the vehicle and from Slater's jacket were the results of an unreasonable search and seizure.

Both Defendants contend that the officer's conduct constituted an unjustified investigatory stop. Moreover, Slater contends that the initial if the initial justification was a field inquiry, it escalated into an unjustified investigatory stop.

The State argues that the evidence should be deemed admissible because the officers conducted a valid field inquiry. That was in the Brief but that was backed off of, based upon the argument.

And it was very evident from the testimony of both officers and form the testimony -- argument of counsel

that she believed it was an investigatory stop. That was the intent.

And the State's position is they had sufficient basis for conducting the investigatory stop, pursuant to Terry v. Ohio at 391 U.S. 1 at 168.

The first -- under the legal analysis, the first inquiry is whether the officer's conduct constituted a field inquiry.

"The rights of all persons to be free from unreasonable searches and seizures by agents of the government is protected by the United States Constitution and the United -- and the Constitution of the State of New Jersey."

And that's U.S. Constitution Amendment Four and the New Jersey Constitution, Article I, Paragraph Seven.

"All searches and seizures must be supported by a warrant, based upon probable cause, unless they fall within a well-recognized exception to the warrant requirement."

And that's State vs. Marvland at 167 N.J. 471 at 482 from 2001. Citing Schleckloff (phonetic) vs. Bustamante at 412 U.S. 218 at 219 from 1973.

"The concept allows different levels of contact between police and citizens, including field inquiries, investigatory stops and encounters based on probable cause."

And obviously, we're dealing with the first two here. And that is cited in State vs. Natisha at

175 N.J. 502 at 510 and 511 from 2003.

Now; " a field inquiry may be conducted without grounds for suspicion." And that's under State vs. Maryland at 167 N.J. 471 at 482 from 2001.

"A field inquiry is properly instituted initiated when a law enforcement officer approaches an individual on the street or another public place and asks him if he is willing to answer some questions." And that's State vs. Rodriguez, 172 N.J. 117 at 126 from 2002. Citations admitted for this – for purposes here.

The officer's questions are permissible so long as they are; "in a conversational manner, that is not harassing, overbearing or accusatory in nature." Again, citing Rodriguez.

"The approached person, however, does not need to answer any questions posed to him by the officer." And that's cited in Maryland at 167 N.J. at 483, quoting Florida vs. Royer at 460 U.S. 491 at 497 and 98 from 1993.

I cite that; "the officer may not detain the individual without any reasonable and objective grounds to do so." Again, cited -- citing Maryland.

"Whether a detention has occurred is measured entirely from the citizen's perspective." State vs. Tucker at 136 N.J. 158 at 165 and 166, from 1994.

"The relevant inquiry is whether Defendant,

under all the attendant circumstances, reasonably believed he could walk away without answering any of the officer's questions." That's citing Maryland at 167 N.J. at 483.

In this case, the record is clear that neither Slater nor Lane reasonably believed that he could end the police questioning without some of the Detective's questions or without staying put.

And quite frankly, the officers both testified very credibly to that affect. Officer Farabella testified very clearly today that Lane was not free to leave at any time, as they approached the vehicle.

And he quoted that it was not a field inquiry in his estimation. That was his testimony. Duffield did testify that they were not free to leave. He indicated that he wasn't sure whether if they had driven off the lot, they would have stopped them.

But I quite frankly surmised from the answer and the way it was answered that it ,probably was. That he was going to stop them. He wasn't sure what he would have done.

But I surmise from the testimony and the demeanor of the officer when he answered the question that, there's little doubt in my mind that he would have made the decision to stop the car if it pulled off the lot.

He probably would have stopped and again, admitted that it was a Terry stop, which is not, everybody knows.

And I think the officer, based upon his testimony, Officer Duffield was well aware that a Terry stop meant an investigatory stop and not a field inquiry.

So it was clear both from both officer's testimony that this was not a field inquiry. That they were approaching -- not approaching as a field inquiry but approaching as an investigatory stop.

Again, it was such that the vehicles – the attendant circumstances were such that the vehicle was the Defendant's vehicle was boxed in by the police, as they approached the vehicle.

That may have been by design. It may be by just by happenstance. But it's little -- there's no left nothing to factual interpretation that the vehicle couldn't leave. It couldn't back up, it couldn't go forward.

And it's true, as the Defendant indicates, that no -- I feel that no reasonable person in that situation would feel they were free to leave under the circumstances.

And under the case law, that's where the field inquiry ends and it stops being a field inquiry, as cited before.

Therefore, this was not a proper initiated field inquiry. Although I find quite frankly the officers had cause for an inquiry, based upon the facts that I heard here.

The only -- the point is, they conducted an investigatory stop. So the next question becomes whether the officers conducted a valid investigatory stop.

The Court -- strike that. First of all, all -- "the right of all persons to be free from unreasonable searches and seizures by agents of the government is protected by the United States Constitution and the New Jersey Constitution."

Again, as cited at Article Four of the U.s. Constitution and the New Jersey Constitution at Article I, Paragraph Seven.

"AII searches and seizures must again be supported by a warrant, issued upon probable cause, unless they fall within the recognized exception to the warrant requirement."

Again, citing State vs. Marvland and Schleckloff vs. Bustamante.

"This contact allows different levels of contact. Again, field inquiries, investigatory stops and encounters, based on probable cause." Again, citing State vs. Natisha.

An investigatory stop, again sometimes a

investigative detention or a Terry stop occurs when; "an objectively reasonable person feels that his or her right to move has been restricted." Again, State vs. Rodriquez, as cited previously.

An investigative detention is constitutionally valid only when based on; "specific and articulable facts, which taken together with rational inferences from those facts, gives rise to a reasonable suspicion of criminal activity."

And that's Terry vs. Ohio at 391 U.S. 1 at 21, from 1968.

"The requisite particularized suspicion must be based on the officer's consideration of the totality of the circumstances in a given case and the rational inferences from the facts must be based on his experience in the field."

And that's State vs. Arthur at 149 N.J. 1 at 7 and 8, from 1967. Cited -- citing again David –State v. Davis at 104 N.J. 490 at 405, from 1986.

And again, that's the problem I find in this case. That there was enough for a field inquiry but the officers did not let the facts go far enough, let their view go far enough to take it to where a field –it went beyond a field inquiry.

I think there were too many questions to ask themselves or too many other options or rationales for why the vehicle stopped there to do other than the

field inquiry.

"Officers in the field may rely on behavior that is consistent with innocence, as well as guilt, in finding reasonable and articulable suspicion to conduct an investigatory stop."

And that's State vs. Pinero (phonetic) at 181 N.J. 13 at 25 from 2004.

And again, behavior that's consistent with innocence, as well as guilt, in finding reasonable, articulable suspicion.

Again, all we have is the vehicle going around the block, which is basically in the Defendant's neighborhood near where he lives.

Parking at a parking lot, which has been stipulated by both the State and the defense that it was used for overnight parking.

And that -- so that in circling the block to get into his location would not be unreasonable. And that he was -- that his lights blinked. Not -- on one occasion.

And there was a rational reason given, although there was no testimony to that fact from the Defendant. The officer did testify, Officer Duffield, that he was told well, I dropped my cell phone and I hit the brakes.

My point is, that was enough for a field inquiry. But I again don't think it went to the extent

of being -- at that time where they would have been justified in making a stop.

This vehicle was stopped as if it's an investigatory stop. i.e., if it was a police vehicle, they would have put their lights on to stop them going down the road, in order to investigate.

And that's what I find from the testimony of the officers, that that would have been done. And I don't think -- I'm positive, based upon the case law, that there would not have been enough to conduct that investigatory stop, turn the lights on and otherwise stop the vehicle if it hadn't stopped there.

Because they didn't wait for this crime to show itself enough to be sure that it actually was going to occur or did occur.

Again, the stop that occurred in this case was not a valid investigatory stop. The State cites the following facts in support of its contention.

The officers has a valid, reasonable suspicion of criminal activity. Defendants were in an area known for prostitution and the officers observed Defendants approach Mary Brown [sic], a known prostitute, and signaled her to meet them in a nearby parking lot.

These facts are not sufficiently specific and articulable to support a finding that the officers believed that criminal activity was afoot and was

reasonable under the totality of the circumstances.

Moreover, if the notion of possible Solicitation of Prostitution was indeed true, the State has failed to articulate why the officers did not wait until the specific -- until further specific and articulable facts arose before acting.

The State does not assert any exigent circumstances that existed or that any person was in danger or anything else that required them to move quickly at that time.

In sum, observing the vehicle circle a block, putting its lights on or flashing its lights and a person approaching does not constitute specific and articulable facts.

Sufficient to sustain a reasonable suspicion of criminal activity, so as to substantiate an investigatory stop, to stop a motor vehicle in public.

Yes, it would have been enough to walk up and say what are you doing here, what's your name; i.e., a field inquiry. But it went beyond that.

Therefore, this police -- the police action in this case I have to find did constitute an improper investigatory stop.

Next, I'll deal with the applicability of the plan view exception to the warrant requirement.

The search conducted without – "A search conducted without first obtaining a warrant is per se

unreasonable, unless subject to an exception."

That's Katz vs. United States at 389 U.S. 347 at 357 from 1967.

"*One* such exception is the plain view exception, which allows evidence seized pursuant to a warrantless search to be admissible when the officer is legally in a position to view the evidence.

The officer inadvertently discovers the evidence and it is immediately apparent to the officer that the object within plain view are evidence related to a crime or contraband."

That's State vs. Johnson at 171 N.J. 192 at 206 and 207, from 19 -- from 2002. Citing Coolidge vs. New Hampshire at 403 U.S. 443 at 465 and 471 from 1971.

In this case, the officers were not legally in a position to view the substance later determined to be cocaine.

And they weren't legally in a position to smell the marijuana, which constituted the -- maybe the ability to remove the Defendants from the vehicle.

Again, they just did not properly institute a field inquiry. Therefore, the plain view exception to the warrant requirement does not apply to the circumstances in this case.

Therefore, Defendant's Motion to Suppress all evidence in this case is granted. I'm going to ask for one of you to submit an Order to that effect, so that

it can be signed.
MR. SANDILOS: I can do that, Judge.
THE COURT: All right. Now, let's deal with, we have two other Motions pending in this matter, if I can find what I did with them. Oh, here they are.
One is a Motion to Conduct Separate Trials for Slater and the co-Defendant Lane. And I did get Briefs on that.
And a Motion to Dismiss, based upon basically the fact that the Court -- or the State re-indicted the matter.
I'm trying to figure out which is best to do for judicial economy. I'll leave it to the three of you.
Do you want me to hear argument on these two Motions or hold them in abeyance to see whether there's -- the State's going to appeal?
MR. SANDILOS: Judge, to be honest with you, I didn't file the other two Motions and I didn't join in on them so I'll leave it to the Court's discretion.
THE COURT: Okay.
MR. CONNELLY: Judge, I would -- that would be fine if the Court would like to wait to see what the State wants to do on appeal, if anything.
THE COURT: Well, neither
MR. CONNELLY: Their moot if they don't appeal the --

THE COURT: I understand. And I've issued Opinions based upon the fact -- the Briefs but I haven't heard argument, obviously.
So they're -- it's basically Opinions that are waiting to hear whether somebody changes my mind or something's added to the Brief documents that I got in each case.
MR. CONNELLY: Well, in that case -- I'm sorry.
THE COURT: Maybe for judicial economy, I can do these fairly quickly if in fact we're going to be moving to trial. We do a Motion to Sever.
And dismiss the indictment matter again can be done if in fact the Indictment comes back on the table.
I assume quite frankly from the Decision that if the State doesn't appeal, you don't have a case.
MS. WILSON: Correct, Judge. I believe at this point we're going to think about appealing.
THE COURT: I understand. I'm not trying to get an answer from you now. I mean, I expected that, \ that you'd have that evaluation to do.
But my point is that probably in judicial economy, I'll just hold these two Motions until--
MS. WILSON: That's fine, Your Honor.
THE COURT: -- you tell me what you're going to do; okay? Thank you.

MS. WILSON: Thank you, Judge.

MR. CONNELLY: Thank you, Judge.

THE *COURT:* Just give me one minute to write these up on my sheets. Let me give these a date of June 16, to determine whether -- that's just a status date, to determine what's going to go on.

It gives a couple weeks for them to evaluate what they're going to do. If they know by then, they can let us know. If not, we'll look at it differently from there; okay?

MR. CONNELLY: Fine. Thank you, Judge.

THE *COURT:* Let me give you back D-1, also. I want to make sure I don't lose that. So it's going to be July -- did I say -- yeah, June 16.

(Whereupon the hearing concluded at this time)

CERTIFICATION

I, CAROL H. VENDZULES, the assigned transcriber, do hereby certify the forgoing transcript of proceedings on Tape Number (3), Index 146 to 5179, from Cumberland County Superior Court, on May 28, 2009, is

prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

_____ _____

CAROL H. VENDZULES AOC NUMBER

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_____ _____

DATE CERTIFIED COPY

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OF THE APPELLATE DIVISION

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5857-08T4

STATE OF NEW JERSEY,
Plaintiff-Appellant,

v.

CHRISTOPHER SLATER AND
ROBERT LANE,
Defendants-Respondents.

Argued May 10, 2010 - Decided May 27, 2010

Before Judges Reisner, Yannotti and Chambers.

On appeal from the Superior Court of New Jersey, Law Division, Cumberland County, Indictment No. 08-11-1055.

Cathryn E. Wilson, Assistant Prosecutor, argued the cause for appellant (Jennifer Webb-McRae, Cumberland County Prosecutor, attorney; James O. Turner, Jr., Assistant Prosecutor, of counsel and on the brief).

Thomas Connelly, Designated Counsel, argued the cause for respondent Christopher Slater (Yvonne Smith Segars, Public Defender, attorney; Mr. Connelly, on the brief).

Ruth Bove Carlucci, Assistant Deputy Public Defender, argued the cause for respondent Robert Lane (Yvonne Smith Segars, Public Defender, attorney; Abby P. Schwartz, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

By leave granted, the state appeals from a June 18, 2009 order suppressing evidence. We reverse and remand this case to the trial court.

I

The following evidence was presented at the hearing on the suppression motion. Detective Harold Duffield of the Millville Police Department testified to his expertise in investigating cases involving narcotics and prostitution. He testified that in his experience as' a police officer, he had observed certain behavior typical of customers or n johns" looking to pick up prostitutes. This included

> The brake lights flashing as they drive by the prostitutes. The prostitutes waving.
>
> The johns honking their horns as they drive by. Driving by and pulling over right away. Stopping, waiting.

At about 11:30 p.m. on April 30, 2008, he and two other officers were In an undercover vehicle in the center of Millville. He later indicated that this was an area known for prostitution activity. They observed a woman whom they had previously arrested several times for prostitution. They watched her walk to the corner of Columbia Avenue and Vine Street. When she reached the corner "a black car went by south on Columbia Avenue and as he rode by, [Duffield saw] brake

lights from the car go on." The car tapped its brake lights, which .Duffield believed from his experience was an attempt to get the prostitute's attention. The car then "continued down Columbia and essentially went around the block ... came back by the corner she was [at] and entered an entrance off of Vine Street into [a] parking lot and parked." When they observed the woman crossing the street and heading for the black car the officers "essentially said hey, something's not right here. She's going to that car. Let's go investigate and see what's going on." Accordingly, they drove their car over to the parking lot and "pulled directly behind the [black] car."

Duffield approached the car and asked the driver why he had flashed his brake lights and whether he was trying to "pick up" the prostitute. The driver, who identified himself as Robert Lane, denied any interest in the woman and claimed that he had parked because he had dropped his cell phone and wanted to retrieve it. The passenger in the car identified himself as Christopher Slater. While Duffield was speaking to Lane, he smelled an odor of raw marijuana." At that point, another officer had arrived on the scene, and they asked Lane and Slater to step out of the car. After the two men exited the car, the police retrieved two baggies of crack cocaine from the front console area, where they had been in plain view.

On cross-examination, Duffield initially stated that the prostitute was fifteen to twenty feet from the black car when the officers first concluded that she was heading for defendants' car. He later stated that she was "about 25 feet" away from defendants' car when they first ,put their police vehicle in motion and "10 or 15" feet away when they parked behind defendants' car. According to Duffield:

> We let her leave [the street corner]. Once they drove by, circled around, drove by again and pulled in the lot, she started walking towards them so we waited a short amount of time as she got closer to the vehicle.
>
> And that's when we left our spot and came around and parked behind theirs.

At the same _time that Duffield stopped in back of defendant's car r another officer approached the prostitute to question her. On cross-examination, Duffield testified that after the two men were arrested, the police found a bag of marijuana in Slater's jacket pocket. The bag contained, in the officer's estimation, more than fifty grams of marijuana; however he later corrected his testimony to indicate that when weighed, it proved to be approximately twenty-eight grams *T,* or about an ounce. The judge indicated his understanding that in a closed car, that amount of raw marijuana would give off a smell.

In answer to the judge *r* s question, Duffield admitted that if defendant had dropped his cell phone, that could explain why he tapped his brakes. He also indicated that there was very little traffic on the street at that time of night. Duffield also admitted that people sometimes park their cars overnight in the parking lot, and that he later learned that Lane lived in the neighborhood on Columbia Avenue. However r he did not know that at the time he was conducting the investigation. He saw the black car pull into the parking lot, park, and have its lights turned off. Duffield testified that the car "wasn't directly into the parking stall . [It] was kind of on an angle."

According to Duffield, the parking lot was in a triangular shape, formed by Vine Street running east and west, Buck Street running north and south, and Columbia Avenue running on an angle. The car pulled into the lot from Vine Street and pulled into a space facing Columbia Avenue. In response to the court's question, Duffield indicated that his purpose in pulling up behind defendants I car was that he "was attempting to find out what was going on with the circumstances that I had leading up to it." He also explained the tactical reasons for parking his

car in such a way that he could drive away quickly or take cover behind the car, if "something bad happens." He explained that based on what he had seen, if the prostitute had continued to approach the black car, and the car had pulled away as his police vehicle approached it, he would have stopped the black car to investigate.

At the end of the second day of the hearing, the judge indicated that he found Duffield to be an entirely credible witness, but that he preliminarily" concluded that the officer had not presented justification for an investigatory stop.

On the third day of the hearing, the State presented testimony from Detective Jody Farabella. Based on his ten years of experience, Farabella testified that johns often solicited prostitutes by using a headlight or brake light and circling the area, sometimes circling multiple times. He corroborated Duffield's testimony that the black vehicle passed the prostitute and "hit his back brakes." The officers then saw "that vehicle circle the block, pass her again and then pulled into the Horris View Plaza parking lot." Like Duffield, Farabella believed that when the black car tapped its brake lights, that was a signal to the prostitute. According to Farabella, when the black car passed her "a second time," it entered the parking lot. The police then saw the woman "walking

closer to the car" and thought "she was going to approach the vehicle." At that point the police "moved in." They saw her get within fifteen feet of the black car and they then pulled their car directly behind the black car. Duffield approached the driver's side, spoke to the driver and Farabella approached the passenger side. "Within seconds," a bicycle officer arrived and Duffield told Farabella "that he smelled raw marijuana."

The bicycle officer, Vinzinski, asked the passenger to exit the car, while Farabella observed. He saw both occupants of the car "kind of huddled together in the vehicle, like crouched over the center console areas when they were in the vehicle." When they exited the car, Farabella saw what he believed to be cocaine in plain view on the front console. At that point, both defendants were arrested, and marijuana was found on Slater's person.

On cross-examination, Farabella confirmed that after seeing the black car tap its brake lights and circle the block "twice" he concluded that the occupants were attempting to solicit the woman for prostitution. This was further confirmed when she started walking toward the parked vehicle. Farabella agreed that when Duffield pulled the car behind defendants' car, the defendants were "not free to leave." He also explained that he and his partners were engaged in "proactive" or preventive

policing. That would include trying to eliminate prostitution by deterring johns from .picking them up. In this case, they were trying to "deter johns from picking up [the prostitute]."

In an oral opinion placed on the record on May 28, 2009, the motion judge found Farabella and Duffield to be credible witnesses. He found that the police had grounds for a field inquiry; however, he found that they conducted an investigatory stop for which they did not have enough evidence. He found as facts that the police were watching a known prostitute and saw a black vehicle approach the area where she was located, saw it "slow down as it neared [her], flash its brake lights as it passed by. Circle the block, pass [her] a second time and pull into a nearby parking lot." The officers believed such behavior was consistent with persons attempting to solicit prostitutes. He found that

> [w] hen the vehicle pUlle.d into the parking lot, [the prostitute] allegedly began walking toward the black vehicle. At that time the officers moved in and pulled their vehicle, an unmarked car, behind the black vehicle...
>
> It's important to note that [she] never got closer than approximately fifteen feet of
> the vehicle. So the officers were never sure that she was actually going to the vehicle.

However, the judge concluded that the officers did not have grounds for an investigatory stop, because they "were never sure that she was actually going to the vehicle," and they did not wait "long enough to determine factually that there was actually [a] Solicitation of Prostitution [that was] going to occur" The judge also found that the five minutes during which Duffield spoke with Lane was "more than, ... a field inquiry." The judge did believe that during this questioning Duffield "could smell [a] strong odor of marijuana emanating from the vehicle." He also found as fact that Farabella observed the two plastic bags of cocaine in plain view. However, the judge concluded that the police had no "legitimate purpose to tell [defendants] to get out of the vehicle, so that has to be suppressed."

The judge acknowledged that the police may rely "on behavior that is consistent with innocence as well as guilt in finding reasonable and articulable suspicion to conduct an investigatory stop." (quoting State v. Pineiro, 181 N.J. 13, 25 (2004)). However, he considered that the vehicle was circling the block in what turned out to be defendant's neighborhood, and it was parking in a lot where neighborhood residents parked overnight. He also found that blinking the brake lights could be explained if Lane dropped his cell phone.

In essence, the judge found that the police "didn't wait for

this crime to show itself enough to be sure that it was actually was going to occur or did occur."

II

We must defer to the trial judge's findings of fact, so long as they are supported by substantial credible evidence in the record, State v. Elders, 192 N.J. 224, 243-44 (2007); State v. Locurto, 157 N.J. 463, 470-74 (1999). However, we are not bound by the judge's interpretation of the law applied to those facts. State v. Drury, 190 N.J. 197, 209 (2007). In this case we are convinced that the judge incorrectly applied the law to the facts as he found them.

We begin by considering well established law concerning investigatory stops.

> A police officer may conduct an investigatory stop if, based on the totality of the circumstances, the officer had a reasonable and particularized suspicion to. believe that an individual has just engaged in or was about to engage in, criminal activity. . .
>
> Reasonable suspicion necessary to justify an investigatory stop is a lower standard than the probable cause necessary to sustain an arrest.
>
> [State v. Stovall, 170 N.J. 346, 356 (2002).]

Further, the court must consider the totality

circumstances, including the officer's experience.

> A determination of reasonable suspicion is fact-sensitive. The totality of the circumstances must be considered in evaluating whether an officer had a reasonable suspicion to conduct a brief investigatory stop. An officer's experience and knowledge are factors courts should consider in applying the totality of the circumstances test.
>
> [State v. Pineiro, supra, 181 N.J. at 22 (citations omitted).]

We agree with the trial court ·that the police made an investigatory stop. However, we cannot agree that the stop was unjustified. The police do not have to wait for a crime to occur before making an investigatory stop. See State v. Arthur, 149 N.J. 1,8 (1997) (quoting Adams v. Williams, 407 U.S. 143, 145-46,92 S. Ct. 1921, 1923,32 L. Ed. 2d 612,616-17 (1972). Moreover, the facts 'must be viewed from the perspective of a reasonable police officer observing those facts at the time; and not viewed in hindsight based on the defendants' perspective. See State v. Pineiro, supra, 181 N.J. at 25; State v. Citarella, 154 N.J. 272, 280-81 (1998).

In this case, as Farabella explained, the police were attempting to prevent a crime from happening. One way to do that was to deter johns from patronizing the prostitute, by stopping and questioning them before ·the transaction actually

occurred. Based on the facts, as the judge found them,

reasonable officers could have readily concluded that defendants were in the process of procuring the prostitute's services. They slowed down as they passed her and blinked the brake lights; they circled the block twice, passing her both times; they then pulled into a parking lot from the Vine Street entrance and drove across the lot so that their car was facing the corner of Columbia where she was standing. Instead of parking in a stall, they parked sloppily at an angle across a stall. The woman then left her corner and headed across the street toward defendants' car. When she was about fifteen feet away from that car, the police started their vehicle and "moved in" to block defendants' car.

The facts, as observed at the time, were more than sufficient to cause a reasonable police officer patrolling a high prostitution area to believe that defendants were about to patronize a known prostitute. There was no objectively observable legitimate reason for the black car to tap its brake lights just as the car passed the prostitute, or for the car to circle the block twice in the middle of the night in this neighborhood. The car was then driven across the parking lot from the entrance on Vine Street to a location directly facing her corner on Columbia. And there was no explanation why a

neighborhood resident looking to park a car for the night would park on an angle instead of pulling into a parking

slot. Further, after observing all of this, the police watched the prostitute cross Columbia Avenue and approach the parking lot to within fifteen feet of defendants' car. Only then did they put their vehicle in motion and "move in" to question defendants.

The Fourth Amendment does not require the police to be blind or naive. See Adams v. Williams, 407 U.S. 143, 145-46, 92 S. Ct. 1921, 1923, 32 L. Ed. 2d 612, 616-17 (1972). They are required to act when they observe events that, to their trained eyes, signal a crime about to take place:

> [P]olice officers are trained in the prevention and detection of crime. Events which would go unnoticed by a layman often times serve as an indication to the trained eye that something amiss might be taking place or is about to take place. The police would be derelict in their duties if they did not investigate such events.
>
> [State v. Davis, 104 N.J. 490, 503-04 (1986) (quoting State v. Gray, 59 N.J. 563, 567-68 (1971)).]

Moreover, the test is not whether there may be an innocent explanation for what the police observe, but whether the totality of what they observe would justify a reasonable officer in suspecting that a crime is --about to occur. "Even if all of the factors were susceptible of 'purely innocent' explanations, a group of innocent circumstances in the aggregate can support a

finding of reasonable suspicion." State v. Stovall, supra, 170 N.J. at 368.

We conclude that as a matter of law, what Duffield and Farabella observed gave rise to a reasonable and articulable suspicion that a crime was about to occur, and hence justified an investigatory stop. Pineiro, supra, 181 N.J. at 25. Defendants' reliance on State v. Kuhn, 213 N.J. Super. 275 (App. Div. 1986), and State v. L.F., 316 N.J. Super. 174, 179 (App. Div. 1998), is misplaced. In Kuhn, and L.F., the officers did not observe any activity specifically associated with a crime. Here, the officers were observing a known prostitute and were able to articulate specific acts that led them to believe defendants were about to solicit an illegal transaction with her.

Once Duffield began questioning Lane and smelled raw marijuana, the officers had a justifiable basis to require both defendants to exit the car. When the defendants were no longer hunched over the center console and were out of the car Farabella was able to see the two bags of cocaine in plain view on the console. Defendants do not question the right of the police to seize the contraband in plain view, so long as the police were lawfully in a position to view it.

We therefore reverse the order suppressing the evidence seized from the car and from Slater's person. Reversed and remanded.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/S/ CLERK OF THE APPELATE DIVISION

SUPREME COURT OF
NEW JERSEY
M-37 TERM 2010 066305

STATE OF NEW JERSEY,
PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER SLATER,
DEFENDANT-MOVANT,
AND
ROBERT LANE,
DEFENDANT.

ORDER

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 21st day of September, 2010.

/S/ CLERK OF THE SUPREME COURT

FILED ON
SEPTEMBER 23, 2010